THE

PROCEEDINGS

In the COURT of KING's BENCH,

ON THE INDICTMENTS AGAINST

CHARLES BOURNE, Gent.

ON THE PROSECUTION OF

Sir *JAMES WALLACE*,

FOR A

LIBEL and for an ASSAULT:

CONTAINING

The Evidence, the Arguments of the Counsel, and the Speech of Mr. Justice WILLES, on pronouncing the Judgment of the Court.

TO WHICH ARE ADDED

COPIES of all the AFFIDAVITS,

Both for the PROSECUTION and for the DEFENDANT.

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In the KING's BENCH.

The KING, *on the Proſecution of Sir* JAMES WALLACE, *againſt* CHARLES BOURNE, *Gentleman, for an Aſſault.*

On Saturday *the* 8*th of* February, 1783, *the following Bill of Indictment was found by the Grand Jury:*

THE Jurors of our Lord the King, upon their oath, preſent, that Charles Bourne, late of the pariſh of Saint Martin in the Fields, in the county of Middleſex, Gentleman, being a perſon of a wicked and malicious mind and diſpoſition, and not regarding the laws of this kingdom, and having conceived great malice, hatred, and ill-will towards Sir James Wallace, Knight, a peaceable liege ſubject of our ſaid Lord the King, on the ſixth day of February, in the twenty-third year of the reign of our Sovereign Lord, George the Third, King of Great-Britain, and ſo forth, with force and arms, at the pariſh aforeſaid, in the county aforeſaid, unlawfully and maliciouſly did make an aſſault upon the ſaid Sir James Wallace, then and there being in the peace of God, and our ſaid Lord the King; and that the ſaid Charles Bourne, with a certain large walking-ſtick which he then and there had and held in his right-hand, then and there unlawfully, maliciouſly, and violently did ſtrike and beat him, the ſaid Sir James Wallace in and upon the head and left-arm of him, the ſaid Sir James Wallace, giving to him, the ſaid Sir James Wallace, then and there, by ſuch ſtriking and beating of him the ſaid Sir James Wallace, with the walking-ſtick aforeſaid, divers ſevere and dangerous blows, ſtrokes, and bruiſes, in and upon the head and left-arm of him the ſaid Sir James Wallace, *with intention then and there felonioufly, wilfully, and of the malice aforethought of him the ſaid Charles Bourne, to kill and murder* him the ſaid Sir James Wallace. And the ſaid Charles Bourne then and there unlawfully and maliciouſly did other wrongs to the ſaid Sir James Wallace, to the great damage of the ſaid Sir James Wallace, in contempt of our ſaid Lord the King, and his laws, and againſt the peace of our ſaid Lord the King, his crown and dignity.

And the Jurors aforeſaid, upon their oath aforeſaid, further preſent, that the ſaid Charles Bourne, being a perſon of a wicked and malicious mind and diſpoſition, and not regarding the laws of this kingdom, and having conceived great malice, hatred, and ill-will towards the ſaid Sir James Wallace, Knight, a peaceable and liege ſubject of our ſaid Lord the King, afterwards (that is to ſay) on the ſaid ſixth day of February, in the twenty-third year aforeſaid, with force and arms, at the pariſh aforeſaid, in the county aforeſaid, unlawfully and maliciouſly did make another aſſault upon the ſaid Sir James Wallace, then and there being in the peace of God, and our ſaid Lord the King; and that the ſaid Charles Bourne, with a certain large walking-ſtick which he then and there had and held in his right-hand, then and there unlawfully, maliciouſly, and violently did ſtrike and beat him the ſaid Sir James Wallace, in and upon the head and arm of him the ſaid Sir James Wallace, giving to him the ſaid Sir James Wallace then and there, by ſuch ſtriking and beating of him the ſaid Sir James Wallace, as laſt aforeſaid, with the walking-ſtick aforeſaid, divers ſevere and dangerous blows, ſtrokes, and bruiſes, in and upon the head and arm of him the ſaid Sir James Wallace. And the ſaid Charles Bourne then and there unlawfully and maliciouſly did other wrongs to the ſaid Sir James Wallace, to the great damage of the

ſaid Sir James Wallace, in contempt of our ſaid Lord the King and his laws, and againſt the peace of our ſaid Lord, his crown and dignity.

And the Jurors aforeſaid, upon their oath aforeſaid, further preſent, that the ſaid Charles Bourne, afterwards (that is to ſay) on the ſaid ſixth day of February, in the twenty-third year aforeſaid, with force and arms, at the pariſh aforeſaid, in the county aforeſaid, did make another aſſault upon the ſaid Sir James Wallace, then and there being in the peace of God, and our ſaid Lord the King, and then and there did beat, wound, and ill treat the ſaid Sir James Wallace, ſo that his life was greatly deſpaired of, and then and there did other wrongs to the ſaid Sir James Wallace, to the great damage of the ſaid Sir James Wallace, and againſt the peace of our ſaid Lord the King, his crown and dignity.

To the above indictment the defendant has pleaded Not Guilty, and thereupon iſſue has been joined.

On Thurſday *the 5th of* June, 1783, *the Trial came on by a Special Jury, before the Honourable Mr. Juſtice* BULLER.

(*The Indictment was opened by Mr.* ADAM.)

Mr. BEARCROFT.

May it pleaſe your Lordſhip, and you Gentlemen of the Jury,

I AM of counſel in this cauſe on behalf of the proſecution againſt the defendant, Mr. Charles Bourne. The charge in the indictment is for an aſſault upon Sir James Wallace, which is laid in two different ways, and the difference is important. The firſt charge is for an aſſault, with the higheſt aggravation that an aſſault can be attended with, namely, with an intention to commit murder. Gentlemen, the circumſtances which attend this aſſault, in fact, perfectly warrant the advice which Sir James Wallace received from ſome friends as to the manner in which it was laid; a mode not uncommon in leſs aggravated caſes than the preſent. The Grand Jury too have found the indictment to be true, with that aggravation: however, as there are circumſtances which, I confeſs, all Sir James Wallace's counſel are of opinion might lead a reaſonable man to doubt whether the aſſault really was attended with that black intention, we all thought, and we had not the leaſt difficulty to perſuade Sir James Wallace to think, that it would be more proper and generous in him not to inſiſt on that part of the charge. Gentlemen, you will not be ſorry therefore to find that you are relieved from the conſideration of that aggravation of the aſſault itſelf, by the intention to commit murder, which, if it were made out in evidence, would moſt undoubtedly be of infinitely more weight than the charge merely of an aſſault. You underſtand therefore, that your enquiry is reduced to a very ſhort and to a very plain queſtion, that is to ſay, whether the defendant, Mr. Bourne, has or not committed an aſſault upon the perſon of Sir James Wallace?

When I am ſtanding up to proſecute for an aſſault upon Sir James Wallace, I may be permitted, I truſt, to ſay a word about him. It is a delicate buſineſs; and upon the delicate part of the queſtion, I truſt, I ſhall be excuſed if I ſay this, that Sir James Wallace's name muſt prevent any man from entertaining a ſuſpicion of impropriety or diſhonour in appealing to a Court of Law. I am aware that there is ſome degree of impropriety, in a Court of Law, to make any thing like an apology for appealing to it; at the ſame time, I am perſuaded, every gentleman will think that leſs could not be ſaid. Gentlemen, it was eaſy for me to perſuade Sir James Wallace to abſtain from going upon the firſt charge, attended with the aggravation that I have mentioned: it was more difficult a great deal for us to adviſe him, and to ſucceed in that advice, as at laſt we did, that he ſhould forbear at preſent from going into the circumſtances of the diſpute which for a great length of time has ſubſiſted between the defendant and Sir James Wallace. When I have ſtated to you, as I have already done, that the ſimple buſineſs of this moment will

will be for you to try whether the defendant is or is not guilty of an aſſault, my Lord, I am afraid, immediately would tell you, that it is improper to enter into a long hiſtory of preceding circumſtances, which occurred many months before the time of that aſſault: I rejoice, however, that the counſel for Mr. Bourne have a right to ſay, and undoubtedly will ſay, preciſely the ſame thing, that the proper time will come, the moment will arrive, when he ſhall come up for judgment upon this indictment, when the whole matter may with propriety be diſcuſſed in this Court, and in ſuch a way too, that the evidence on both ſides may form a baſis of deciſion more becoming than any which has yet been taken in any ſelf-erected Court of Honour.

I therefore am not aſking you to form a judgment upon that point againſt Mr. Bourne; nor will the counſel, I preſume, on the other ſide, aſk you to form a judgment againſt Sir James Wallace: it will relieve you much, when you underſtand that nothing of that ſort will paſs upon this occaſion, when it is impoſſible any thing ſhould paſs that will be ſatisfactory, or can be conſidered as a full enquiry on that point. It remains therefore that I only ſtate ſhortly to you the circumſtances of the aſſault, which, I believe, cannot be diſputed on the part of the defendant.

I am to ſtate to you, that on the 6th of February, as Sir James Wallace was walking in the ſtreet, near the Admiralty, in his way to the Admiralty, he was met by the defendant, Mr. Bourne—(Mr. Bourne, I underſtand, is an officer in the Marines.) Inſtantly as Mr. Bourne perceived Sir James Wallace, he made uſe of theſe expreſſions: "You damn'd ſcoundrel! Sir James Wallace!" and immediately ſtruck him with a ſtick, having a braſs head, upon Sir James Wallace's head, with ſuch violence, that it cut his hat almoſt through, it cut through a piece of leather frequently worn in the front of hats, and was attended with ſome violent contuſions, which will be proved by the ſurgeon; and it was a moſt fortunate circumſtance, (with ſuch violence were theſe blows adminiſtered) that at this moment Sir James Wallace is alive to tell you this ſtory, and Mr. Bourne to be proſecuted for a miſdemeanor only; for I am inſtructed, that the ſurgeon, who is the beſt judge in this buſineſs, will tell you, that the probability was ſtrong, that ſuch blows would be attended with inſtant death. I ſhall call a perſon, perfectly indifferent between the parties, who was preſent, and ſaw the beginning of the fray. I ſhall call another, who ſaw a great part of it, beſides Sir James Wallace, who will be of courſe called to give you this account. You will have little to do, therefore, upon this occaſion; for the caſe is reduced to the ſimple queſtion, Is the defendent guilty of an aſſault? If I prove this caſe, or any thing like this caſe, your taſk will be eaſy; you have nothing to do but to pronounce the defendant guilty. I ſhall take up no more of your time upon the preſent occaſion, except I may be permitted to ſay this, which all the world will allow to be no more than truth: If either the friends or enemies of England were to ſet about making a liſt of naval officers, who have done honour to this country, in the laſt war, Sir James Wallace's name would ſtand among the foremoſt. His countrymen cannot be ſo ungrateful as to forget him; the enemies of his country have felt his bravery too deeply to do ſo.

Evidence for the Proſecution.

Sir JAMES WALLACE *ſworn.*

Examined by Mr. Silvester.

Q. Pleaſe to relate what happened to you on the 6th of February, as you was going from Mr. Drummond's to the Admiralty? What hour was it?

A. About the middle of the day. I had called in at Mr. Drummond's, and was going to the Admiralty, when Mr. Bourne met me in the ſtreet, near, I think, to Buckingham-Court: he came upon me with words ſomething to this purpoſe, "You ſcoundrel! Sir James Wallace!" he had a ſtick, that appeared to be a cane with a metal head, which he turned in his hand, and with the head of it ſtruck me with ſuch violence over my head, as to cut through my hat and the leather, and ſtun me for ſome time. This is the hat juſt in the ſtate he left it: by a kind of natural impulſe

impulſe I put up my arm to cover my head, and in that time I recovered my ſenſes. Again he laid on upon my arm: I recovered, and then I preſſed on, and began cudgelling him till we were ſeparated by the mob.

Q. You received one blow upon your head, which ſtunned you?

A. I received ſeveral upon my head, two in particular, which cut through my hat.

Q. Had you ſtruck Mr. Bourne before you received theſe blows?

A. No.

Q. Had you ſeen him before he came up to you?

A. A very ſhort time before he came up to me.

Q. What condition was you in after you received theſe blows?

A. I was ſtunn'd for ſome time; and by putting my hand up to my head, the blood returned, and I recovered.

Q. What ſituation was your head in after theſe blows?

A. Violently contuſed (they happened to fall upon the forehead, the ſtrongeſt part of the head); I verily believe, had he ſtruck me upon the temples, or the middle of the head, that he would have fractured my ſcull.

Q. I believe you was afterwards attended by a ſurgeon?

A. I was.

Court, Had you more than one blow before the time that you both ſtruck each other with your ſticks?

A. I had ſeveral blows: I put up my arm by a kind of natural impulſe; and I had ſeveral blows before the cudgelling began. He turned the ſtick in his hand, and laid on me, as faſt as he could, like a villain and a ſcoundrel as he was.

Q. How many blows do you ſuppoſe you received before you was able to return them?

A. I believe I did not receive leſs than a dozen.

Q. You repreſent yourſelf as ſtunn'd for ſome time?

A. I was ſtunn'd with the blows.

One of the Jury. Pray, were there any menacing words paſſed at the time?

A. I think he began by calling me ſcoundrel; but there were very few words paſſed before he began the blows.

Q. No words, but abuſive words?

A. No.

Sir JAMES WALLACE, *croſs-examined by* Mr. SOLICITOR-GENERAL.

Q. Sir James Wallace, you will do, I am ſure, Mr. Bourne the juſtice to ſtate to the Court and Jury, that this was not (unfortunately for both of you) the firſt time you have had ſome differences?

A. Sir, for a long time he has ran about the world, propagating the moſt infernal falſehoods, tending to prejudice the minds of mankind, and to deſtroy my character; and at this time he knew I wanted to bring this on to a hearing.

Court. It is not material for this purpoſe to bring this on now; I ſuppoſe you will go into it hereafter.

Mr. *Solicitor-General.* Certainly; but I would not have your Lordſhip, the Jury, or the By-ſtanders conſider this as the beginning of the diſpute.

Mr. *Bearcroft.* I ſtated there had been diſputes.

Court. But whether Sir James Wallace was wrong, or Mr. Bourne wrong, it has nothing to do with the matter now before the Court.

Mr. *Solicitor-General.* I don't mean to go with any minuteneſs into it, I only wanted juſt to aſk, whether Mr. Bourne, on his part, had not, for a great while, complained of your conduct to him, when he was under your command going to Jamaica?

A. Never properly.

Court. We are not going into the merits of that, whether you are right, or he is right.

Sir *J. Wallace.* I ſhould be glad to underſtand the genleman, for I don't underſtand him.

Court. The queſtion is, whether Mr. Bourne conceived himſelf to be ill uſed?

A. Good God! how can I tell what he conceived?

Mr. *Solicitor-General.* Has he not repreſented that he had great cauſe of complaint againſt you, for behaving rigorouſly and ungentleman-like to him?

A. That point was coming to a hearing, and he knew it; and at this time he committed this aſſault.

Court. You are anſwering the queſtion indirectly, that there had been a miſunderſtanding before, and he thought himſelf ill uſed?

A. I believe that is very well underſtood.

Mr. *Bearcroft.* Sir James ſays, he had complained, and that matter was coming to trial, who was right or wrong.

Mr.

Mr. *Solicitor-General.* Do you mean, when you ſay that that matter was coming to a trial between you, that the propriety of your conduct to him as an officer, or of his to you as an officer, was coming on before the proper judicature to decide that, or only ſome collateral matter about libels, or publications of that ſort?

A. I mean my whole conduct towards him, and his towards me.

Q. Before what Court was that about to come on, becauſe you ſay he knew it?

A. It was coming on before the Grand Jury.

Q. That is, upon the charge of a libel?

A. Upon the charge of a libel.

Q. We know very well how much that would involve or concern this ſubject. That was all, was it? There was no inveſtigation at that time?

Sir *J. Wallace.* My Lord, unleſs we come into the whole of this matter, have I any right to anſwer this gentleman every particular queſtion?

Court. If he aſks you any thing improper, I will ſtop him.

Mr. *Solicitor-General.* I ſhould be very ſorry to aſk you any thing improper.

A. I ſhould be very glad to know what I am to ſay upon that ſubject.

Q. I meant to aſk you, to this fact, whether, at the time you ſay he knew that all your conduct towards him, and his towards you, was coming on to be decided before a Court of Juſtice, I aſk, whether you meant that there was any inveſtigation of your conduct coming on before a Court-Martial, that he knew of?

A. I believe the time had elapſed for a Court-Martial; but I was ſubmitting to the laws of my country.

Mr. *Solicitor-General.* The view therefore was to a proſecution for ſome publications upon the ſubject. Now, are you quite ſure you are correct in your recollection upon this ſubject, that this blow was in ſuch a very ſhort period after he met you in the ſtreet; or whether there had not been a previous converſation that occupied ſome time; and a good deal of converſation might be had in a minute or two?

A. There were words, I think, but they were very ſhort.

Q. Do you recollect what the words were?

A. As near as I can recollect, it was, "You ſcoundrel, Sir James Wallace!"

Q. Was that all that was ſaid?

A. All that I heard.

Q. That was an opprobrious expreſſion, without any thing more. But there was no talk about what had paſſed between you?

A. Not a word.

Q. He ſaid nothing to you, but "You ſcoundrel, Sir James Wallace!" and immediately hit you a blow over the head?

A. Yes.

Q. That is the whole of it?

A. Yes.

Q. Was any body preſent?

A. I was walking by myſelf.

Q. Was there any body with Mr. Bourne?

A. I believe a gentleman was walking with him: he ſeemed to have more friends there than I had.

Q. In the ſtreet?

A. I cannot be particular who they were.

Q. You had, you know, your eyes in your head, and you could ſee Mr. Bourne, whoſe perſon you are perfectly well acquainted with—you have gone a voyage together; and his character too you know perfectly well?

A. I do, upon my word.

Q. Now you, not having received any contuſion in your head at that time, you could ſee whether he was alone, or in company, at the time you met him?

A. I believe there was a perſon walking with him, whom he quitted, and he came up to me.

Q. One perſon?

A. I don't recollect.

Q. Should you know the perſon again if you was to ſee him?

A. I believe him to be a Clerk in the Admiralty.

Q. How near might he be at the time this happened?

A. I don't know particularly, ſome yards.

Q. Near enough perhaps to hear any thing that paſſed; for you don't ſeem to recollect it very accurately?

A. Nor would you, if you had had thoſe blows over your ſkull.

Q. But you are putting the cart before the horſe, for that was before. Do you recollect any thing elſe that was ſaid?

A. No, I don't.

Q. You don't remember then whether a ſingle word paſſed, referring to your conduct to him, or his to you, but that expreſſion, previous to his ſtriking you?

A. I ſaid, there was ſome abuſive language, I don't confine it to that, and very ſhort, before he began his blows; I don't confine it to that ſingle word; but, to the beſt of my recollection, it was, "You ſcoundrel, Sir James Wallace!"

Q. But I wiſh you would recollect what more paſſed?

A. There might be ſomething more.

Q. A good deal more?

A. Not a good deal more; I can't be particular to the words.

Q. Did he aſk any queſtion, and did you give him any anſwer? Cannot you recollect any thing that did paſs before this?

A. What would you have me ſay?

Q. Either that ſomething paſſed that you do not recollect, or that nothing paſſed.

A. This is teaſing; I have ſaid half a dozen times I don't recollect any thing elſe: there was ſome abuſive language ſpoken.

Q. But you don't recollect what it was?

A. No farther than he ſaid, "You ſcoundrel, Sir James Wallace!"

Court. And you don't recollect any more words than thoſe?

A. I don't.

Q. You would not have, perhaps, attention enough at the time to take notice whether Mr. Bourne had any ſtick at all in his hand, or was walking without one, till he happened to ſee you?

A. No, I don't.

Q. I am deſired to aſk you, whether, upon my ſuggeſting, it will not bring it to your memory, if he did not aſk you, whether you was willing to do him, Mr. Bourne, that juſtice which his character, you knew, demanded, before any blow happened? Do you recollect any thing of that ſort?

A. No, I don't. Beſides, if he had, the matter was in ſuch a train then, that I think in honour I could not, becauſe I had commenced a proſecution, and it was to be heard within a day or two: but I don't recollect his ſaying a word of that ſort.

Q. But you think, if he had, having inſtituted a proſecution, you ſhould have declined anſwering that queſtion?

Sir *J. Wallace.* My Lord, am I to anſwer that queſtion?

Court. Mr. Solicitor-General, I don't know what you mean to inſinuate: if you mean to inſinuate any thing improper to be enquired into in a Court of Juſtice, Sir James Wallace, to be ſure, is not to anſwer to it.

Mr. *Solicitor-General.* I meant nothing in the world like it.

Court. Put your queſtion a little more pointed to Sir James Wallace.

Mr. *Solicitor-General.* However, you recollect nothing about it.—Have you ſeen that ſtick with which he ſtruck you?

A. I never ſaw it but in his hand.

Q. And whether he had it when you firſt ſaw him, or borrowed it from the Gentleman that was walking with him, you did not obſerve, and don't know?

A. No.

Mr. *Bearcroft.* Do you recollect what became of the ſtick?

A. I believe it was broke—I think I ſaw the metal head fly off with the blows.

Q. You was aſked about a Court Martial—Did you apply to the Admiralty for a Court Martial?

A. I did.

Q. What was the anſwer you received?

A. That we were now coming to half-pay; that I ought to have tried him in the firſt inſtance.

Q. The Admiralty declined it?

A. They did.

Mr. WELDON, *(ſworn) examined by Mr.* LAW.

Q. Pray, Sir, what are you?

A. An Attorney.

Q. I believe you happened, upon the ſixth of February, to be near the place where this affray happened?

A. I don't recollect the day of the month; it was in the courſe of laſt Term.—I was returning from the Hall, and paſſing along the ſtreet, almoſt oppoſite the Admiralty, I obſerved ſome motion, or buſtle, juſt by the Admiralty-gates almoſt; but whoever the parties were, that had been engaged, they were at that time ſeparated from each other, and the few people that were there were diſperſing. I croſſed over the way, having buſineſs at the Admiralty, it was not matter of curioſity altogether.—I croſſed over the way, and went into the Admiralty-yard, and went into the office: Mr. Madan, I believe, was in that office. I ſaw ſome clerks, and a Gentleman, Mr. Bourne. I ſaid, "In the name of God, who have you been beating there?" He ſaid,

"Sir

"Sir James Wallace," and added ſome other epithet to it.

Q. What epithet?

A. He was in a heat and paſſion at the time.

Q. What was the epithet?

A. That ſcoundrel, or raſcal, I believe it was.

Q. Did he ſay any thing of the ſort of beating he had given him?

A. There were three or four clerks there; they were ſpeaking of the parts of it they had ſeen; I did not pay a great deal of attention to what paſſed, as I did not ſee any part of the tranſaction myſelf.

Q. Did you ſee no blows?

A. Not that I could diſtinguiſh—I was on the oppoſite ſide of the way.

Q. Endeavour to recollect, as near as you can, what Mr. Bourne ſaid?

A. Both parties were ſtrangers to me.

Q. You owe it to juſtice to mention every thing that paſſed.

A. The clerks ſpoke more than Mr. Bourne himſelf: each was relating the parts of it they had ſeen; I don't know whether they did ſee it or not.

Q. They mentioned it in the preſence of Mr. Bourne?

A. They did.

Q. Do you recollect any thing that was ſaid?

A. No, only that there was a ſtick broke; and they ſaid, I think, they ſaw it come over the Admiralty wall.

Mr. *Bearcroft*. Do you recollect any particular expreſſion Mr. Bourne made uſe of in that converſation?

A. I don't, but I ſaid, "Sir, who is it you have been beating?" or ſomething to that purpoſe; and he ſaid, "That ſcoundrel, or raſcal, (I forget which,) Sir James Wallace"—he ſpoke it in a heat, or paſſion.

Q. That is all you recollect?

A. Yes.

Mr. GRASSWELL, (*ſworn*) *examined by Mr.* ADAM.

Q. You live oppoſite the Admiralty?

A. Near the Admiralty, on the ſame ſide.

Q. Inform the Court what you ſaw paſs between Mr. Bourne and Sir James Wallace.

A. Some time in February laſt I was in my ſhop. I heard a noiſe in the ſtreet; I look'd through the window, and ſaw two Gentlemen fighting, one of whom I underſtand to be Lieutenant Bourne; his hat was off, and lay upon the ground; and the other I underſtand to be Sir James Wallace, for I was a ſtranger to both: and he had his arms extended in this manner, [*deſcribing it*] whilſt the other was beating him.—I ſaw Lieutenant Bourne ſtrike him on the arm, and about the ſhoulder. Sir James Wallace had no weapon in his hand to defend himſelf, at that time, that I ſaw.—After this I ſaw Sir James Wallace cloſe with Lieutenant Bourne; and he ſeemed to me to wrench the ſtick or cane out of his hand; upon this Lieutenant Bourne turned about, and walked away.—I then ſaw a Mr. Goodall, a clergyman, go up to Sir James, take him by the coat, and draw him out of the crowd.

Q. You did not ſee any more paſs?

A. No.

Mr. FARQUHAR, (*ſworn*) *examined by Mr.* BEARCROFT.

Q. I believe you was called in to attend Sir James Wallace?

A. I was, on the ſixth of February, about ſeven o'clock in the evening. I ſaw Sir James Wallace: he told me he had got a ſevere threſhing, a beating, oppoſite the Admiralty, by Lieutenant Bourne, of the Marines: he ſaid he had been making applications to it himſelf, and was better: but as he was feveriſh about dinner-time, he thought it better to be bled. I examined the appearances upon his forehead: two very ſevere blows had been given there; there was puffing and ſwelling, and contuſions, what is commonly called black and blue.—The two ſevere blows ſeemed to be given here on the forehead; he ſaid he had alſo ſevere blows upon his arm, in defending his head.—Upon examining that the arm was pretty much in the ſame ſtate, he certainly had received ſome very ſevere blows.

Q. On what parts of the head?

A. Particularly here, [*deſcribing it*] in the forehead; but there ſeemed to be blows on the head: whether it was by the doubling of the cane, or not, I can't pretend to ſay, but the two ſevere blows were here on the forehead.

Q. Were they in a dangerous part?

A. I believe every blow upon the head is dangerous, and a ſevere one particularly ſo.

FOR

FOR THE DEFENDANT.

Mr. SOLICITOR-GENERAL.

May it pleaſe your Lordſhip, and Gentlemen of the Jury,

I Riſe, Gentlemen, to ſay a word or two to you upon a ſubject that ought to be one of the moſt unpleaſant, perhaps, not only to the two Gentlemen who are the contending parties on this proſecution, but to every Gentleman that has any ſenſe and feeling of honour, and that can enter into thoſe ſentiments which belong, in a greater degree, perhaps, than to moſt other men, to Gentlemen who are educated to, and live in, a military profeſſion;—a character that has a tendency to inſpire ſentiments of honour, perhaps, not ſo delicately felt by others.

This is a kind of proſecution not often brought by Gentlemen in that ſituation: I don't mean to contend before his Lordſhip that a military or a naval officer has not juſt as good a right to appeal to the laws of his country for redreſs, in any grievance whatever, either to his perſon, his reputation, or his property, as any civil man: however, Gentlemen, there are unqueſtionably occaſions in which it is impoſſible for the laws of this country, conſtituted as they are, and conſtructed, upon the whole, as they ought to be, to diſpenſe that in a thouſand caſes, and to perſons like theſe, that either of the contending parties can feel to be like juſtice. I will ſtate, for inſtance, a principle of law, and which has been told you probably by my learned friend, before I came into Court—I admit it to be law; and my Lord, I am ſure, if the caſe called for it, would tell you it was ſo—that words, however vexatious, however opprobrious, however irritating, and however inflaming, are not a juſtification even of a fillip upon the noſe;—that is the law of England.—I have heard that law laid down; and I myſelf was of counſel, not a great while ago, in the caſe of a Gentleman, who may, for what I know, be now one of my hearers; he is one of my profeſſion.—An action was brought againſt that Gentleman, by another of the ſame profeſſion, for a very violent aſſault. The Gentleman uſing very provoking language, and calling him, over and over again, a Lyar; he gave him a blow, which knocked two of his teeth down his throat. In that caſe, words were no juſtification for blows; my friend remained unjuſtified, and there was a verdict againſt him; but that verdict was ſuch a one as ſhewed the ſenſe of the perſons who tried that cauſe, and of the Judge who ſuperintended that trial, as to the nature of it—the Jury gave damages to the amount of a penny; and the Judge would not certify that the battery was proved neither. Such was the rigour of the law, that having hit the plaintiff a blow, he muſt pay for it; and the law is not to be violated, becauſe it may bear hard in this or that particular caſe: it may be a wiſe principle upon the whole; and principles are not to give way to the expediency or the circumſtances of the caſe. The law being in this, and in a thouſand inſtances, very incompetent to ſatisfy the feelings of gentlemen of honour and of ſpirit, a great deal will remain to be done; not by you, indeed, for the only queſtion you have to try (as Sir James Wallace has thought proper to bring the queſtion before you) is, Whether Sir James Wallace was, or was not, in fact, aſſaulted by Mr. Bourne, the defendant? —Gentlemen, Mr. Bourne never denied that he aſſaulted him: this proſecution is not for the purpoſe of bringing any great ſecret to the view of the public, for all the world knew it; —and all that they know now, after Sir James Wallace has cloſed his evidence, is, that Mr. Bourne has given him a blow, as deſcribed by Mr. Farquhar, the ſurgeon, who deſcribed it juſt in the way that any other ſurgeon in the kingdom would do.

Court. That is all that this trial can aſcertain.

Mr. *Solicitor-General.* I believe that my client would think himſelf hardly treated, if I ſhould ſit down with only ſaying, that Mr. Bourne did meet Sir James Wallace in the ſtreet, and ſo meeting him, he took a little cane, ſuch a one, I underſtand, as this gentleman has now in his hand, ſuch as are generally uſed, and that he gave him a blow or two upon the head.

Gentlemen, Mr. Bourne thinks it neceſſary that my Lord and you ſhould know, and that the public ſhould underſtand, that this was not an unprovoked, injurious conduct, on his part; but that, on the contrary, it was a mode of repelling that which he felt, and does feel; and (till juſtice, and complete juſtice, is done between the parties, by

by the ſentence that the Court may paſs, when affidavits come to be laid before them, ſtating the whole mutual conduct of theſe Gentlemen to one another) he does feel, that he has been one of the moſt injured, one of the moſt degraded men living, at leaſt attempted to be degraded: but he feels ſomething in his own mind, that tells him, that no man living can with juſtice ſink him below the character of a Man of Honour and a Gentleman; he feels that he bears about him a conſciouſneſs that in all his conduct between Sir James Wallace and himſelf, he has acted handſomely, honourably, rightly, dutifully; for being under his command, he owed him ſubordination and obedience, which he was at all times ready to pay him, and did pay him: but in that ſituation, of ſubordination on his part, and ſuperiority and command, on the part of Sir James Wallace, he does think, that no mortal man in the profeſſion was ever uſed with more impropriety, with more inhumanity, or with more barbarity, than he ſuffered from Sir James Wallace: he thinks too, Gentlemen, (for I ſhall not go into the whole detail, which will neceſſarily be laid before the Court ſome time or other, in order to ſhew that what he did was, in compariſon of what he ſuffered, dictated by moderation and by equity;) he thinks, he may miſtake in ſo thinking, I don't mean to decide which were right, and which wrong, till I hear the affidavits of Sir James Wallace and his witneſſes, as well as thoſe on the part of Mr. Bourne: but I am expreſſing to you Mr. Bourne's feelings; I have read his account of them, drawn with his own hand, and if it is true (and I know nothing, I am ſure, to contradict it), his complaints are very well founded, his ſufferings muſt have been extremely pungent, and his paſſions ſeem, compared with theſe kind of ſufferings, to have been very moderate indeed.

Now, Gentlemen, I will add another thing, which is more to the point: Sir James Wallace, as my learned friend ſays, is an officer of great rank; and to mention his name is to make a panegyric upon him. I ſhould be very ſorry to detract from the merit of Sir James Wallace, as an officer, in any part of his character whatever—I have heard very good things of him, and, in his profeſſion, I am ſure, I don't recollect any that were not good; but however, his merit, as a brave commander, does not at all come in queſtion in this caſe, nor does it relate to it in any part of it, that I know of. He may have all his merit, if he has it; I have no reaſon to think he has it not.—I hope he will enjoy the thanks of his countrymen, and every reward which his valour intitles him to receive.—This I know, my client, Mr. Bourne, has furniſhed me with evidence, if it were material (which it is not, as his Lordſhip will inform you, upon the preſent occaſion), that would ſatisfy you, that even at this hour, when they know the fact now imputed, and there is no doubt about it, that Mr. Bourne ſtands very high in the eſtimation of all his brother officers, who have voluntarily come forth to bear their teſtimony to the honour, the propriety, and the neceſſity of his conduct, in this very inſtance of it. I have the Reſolutions of the whole Corps of Officers with whom he ſerves—I will not mention their names, but juſt ſtate the numbers of them: they ſtate the fact as it was known and perfectly underſtood, with all this beating and battery which you are now to decide upon.—This teſtimonial is ſigned by a General Officer of great reputation, ſix Field-Officers, fifteen Captains, and thirty-eight ſubalterns: they ſtate the whole matter, and return him thanks for his conduct; or, if they do not uſe the word Thanks, it is the ſtrongeſt approbation of his conduct, declaring it impoſſible for him, in his ſituation, to have acted otherwiſe than he did.—I would not therefore have you go away when it is circulated; for you will find it in the news-papers.

Court. News-papers! What have the news-papers to do in this caſe?

Mr. *Solicitor-General.* Nothing at all.

Court. It is really talking for the news-papers.

Mr. *Solicitor-General.* When a perſon is found guilty, it naturally imports, to the eye of the public, a conſiderable imputation upon him. I only deſire it may be underſtood by the Gentlemen who try the cauſe, and every perſon that hears it, that nought more is decided than this, that Sir James Wallace was, in fact, ſtruck and aſſaulted by Mr. Bourne; but whether it was with or without any reaſon ſhort of a complete juſtification, is not decided when this verdict is given.—That is all. I beg to ſay, that all that is decided by this trial is, that my client, in point of law, is not ſtrictly

juſtified in giving Sir James Wallace a ſtroke: but as to the degree of the propriety of the conduct, how much the one is degraded as an Officer, much leſs how much he is degraded as a Gentleman, is not decided, nor can be, nor ought to be decided in the trial of this cauſe.

Now, having ſaid thus much, the gentleman behind me is deſirous, I underſtand, that I ſhould call to you a witneſs, merely to ſtate the circumſtances of the aſſault, to prove that it was not that ſudden, rude, inſolent, overbearing thing that you would be apt to collect from the manner in which it has been now ſtated to you, I dare ſay, from ſome forgetfulneſs of Sir James Wallace of the circumſtances that immediately led to it: but the fact is, that my client, conceiving himſelf, as I have repreſented, very deeply injured, by a long detail of improper and hard conduct (which it is not now neceſſary to go into), meeting Sir James Wallace, when he ſaw him at ſome few yards diſtance, he ſaid, "This is Sir James Wallace, I will ſpeak to him." He made him a bow with great politeneſs, and he civilly began a converſation, inſiſting upon an apology or explanation for the ill uſage he had met with. Sir James Wallace gave him that ſort of anſwer that he thought proper, declining to make any ſort of apology to him, or give him any ſort of explanation that might ſatisfy him. Mr. Bourne thought it a duty he owed the public, that he owed to his profeſſion, and to his own eſtimation in the world, to treat Sir James with contempt; for ſo he profeſſes to feel a great deal upon the ſubject, by giving him that which, to men of rank in the world, is not very quietly and comfortably taken, that is, a blow upon the head.—"If you, Sir James Wallace, think of degrading and diſgracing me, I ſhall treat you as I think you deſerve:" and he gave him this blow upon the head; but it was not in conſequence of that brutal, paſſionate expreſſion, but in conſequence of Sir James Wallace poſitively refuſing to do that which this gentleman, who knew all the circumſtances, felt the ſentiments of juſtice and propriety, ought, in his opinion, to have compelled him to do.

Gentlemen, I will call the witneſſes to give you an account of the tranſaction.—As to the repreſentation my friend called the ſurgeon to make, I really wonder a little that Mr. Farquhar ſhould be thought fit to be called upon the preſent occaſion; becauſe I do think, that if Sir James Wallace, this brave and gallant officer, as he has been repreſented, and, as far as I know, juſtly repreſented to be, had received a blow, it would not have been the black and blue, the puffing and ſwelling, the mere pungency of that blow, that would have produced this proſecution; therefore, I confeſs, I wondered that my friend ſhould introduce that, by way of making weight to this. Whether it was black, blue, or red, it ſeemed but a poor miſerable ingredient in a caſe like this between theſe parties: however, it is their buſineſs to conduct a cauſe in their own way. But to think that Sir James Wallace would ſeek for a remedy merely from the injury of the blows, or of the pain, or whether he be let blood in three or four hours, appears to me to be very degrading indeed!

Gentlemen, I ſpoke of calling a witneſs, but I ſhall not call him; he may make an affidavit hereafter.

Mr. Juſtice Buller told the Jury, that the only queſtion for their conſideration was, whether Mr. Bourne did, or not, aſſault Sir James Wallace?

The Jury immediately found the defendant Guilty on the ſecond and third counts in the indictment.

KING's

KING's BENCH, *July* 5, 1783.

The KING, *on the Profecution of* SIR JAMES WALLACE, *againſt* CHARLES BOURNE, *Gentleman, for a Libel and an Aſſault.*

MR. Juſtice *Buller* made a report of the evidence on the trial of the indictment for the aſſault.

The counſel for the defendant then requeſted that the Court would permit them to argue both caſes together, the libel and the aſſault; which being granted, the indictment for the libel, which was found by the Grand Jury on the 8th of February, 1783, (to which the defendant had ſuffered judgment to go by default) was read, of which the following is an abſtract:

THAT Charles Bourne, Gentleman, did print and publiſh, and cauſe to be printed and publiſhed, a certain falſe, wicked, ſcandalous, and malicious libel, of and concerning Sir James Wallace, and of and concerning his behaviour, as Commander of the ſhip the Warrior, towards the ſaid Charles Bourne, in the Morning Herald of Monday the 23d of December, 1782, as followeth:

" For the MORNING HERALD.

" Mr. EDITOR,

" IN anſwer to a letter in the Herald of this day, ſigned ' James Wallace,' I am to obſerve, the paragraph therein alluded to, was not inſerted either by me, or by my knowledge; and whatever Sir James Wallace may think, it requires very little diſcernment to diſcover his motives for obtruding a private quarrel on the notice of the public.—The aſſertion of Sir James Wallace, ' *that I never once came to the point*,' either in Jamaica, Bath, or London, I ſhall leave for the unprejudiced mind to determine on, by ſtating a few facts: but I muſt firſt obſerve, that it is with infinite regret I find myſelf obliged to trouble the public with a detail ſo unintereſting, which, yet I hope, they will allow is become abſolutely neceſſary, for the vindication of my honour.

" On my arrival in England I was informed that Sir James Wallace was at Bath.—My feelings, as an officer and a man, induced me to haſten thither,—either to receive ample apology for the inſults I had ſuffered, or to give him that chaſtiſement he ſo juſtly merited at my hands. —When at Bath, not being able to obtain an interview with Sir James Wallace, I ſent him the following note:——

' Mr. Bourne acquaints Sir James Wallace, *that if he perſiſts in not ſeeing him*, it will confirm the opinion Mr. Bourne has long entertained, that Sir James Wallace is deſtitute of every principle of honour, and every idea of a gentleman.

' Mr. Bourne underſtanding that Sir James Wallace has ladies with him, is the reaſon he does not call on him in perſon.

' *White Lion, Friday morn.*

" To this note I received a verbal anſwer, in theſe words, ' Very well.'——Next day I ſaw him in the ſtreet; on which I told him, I was glad to meet him, but was ſorry his conduct had put it out of my power to treat him as a gentleman; on which he pulled out a piſtol, and cocked it at my breaſt, declaring he would ſhoot me. I pointed out the impropriety of his conduct, and urged a more private meeting; which he refuſing, I ſhook my cane over his head, applying ſuch epithets as I thought his *then* conduct deſerved. Ten minures after, I called at his houſe, properly prepared: he being denied, I wrote the following letter; and however diſtreſſing it muſt be for a gentleman to uſe ſuch language, I was obliged to ſuit it to the behaviour of a perſon to whom it was to be addreſſed:——

' *To Sir* JAMES WALLACE.

' SIR,

' I yeſterday by letter acquainted you, that I conſidered you as deſtitute of every principle of honour, and every idea of a gentleman. —Your infamous behaviour this morning, in the

the ſtreet convinces me that you are a daſtardly coward and ſcoundrel. When I was on board the ſhip you commanded, you treated me with the moſt unmerited inſolence and abuſe; becauſe you knew it was not in my power, from my ſituation, to reſent it.—When no longer under your command, I ſeized the firſt opportunity at Jamaica, of demanding that ſatisfaction of you, which an injured gentleman had a right to expect. You then meanly and cowardly eſcaped from my reſentment for that time, by giving me to underſtand that I ſhould hear from you,—but in that you proved yourſelf a lyar.——

'I flew to Bath immediately on my arrival in England.—My meſſages and note to you yeſterday, muſt have convinced you what were my intentions; but you dared to offer inſults, at a time when you knew they could not be reſented; and have not reſolution to meet the man whom you ſo greatly injured.—Your flying from Bath ſhall not protect you from my reſentment;—the inſults I have received from you, are too great to be forgotten, or forgiven.—I ſhall expoſe you in the public prints as the ſcoundrel I know you to be, and treat you as ſuch wherever I meet you;—for which purpoſe I will follow you to London, or to any part of the world.

'CHARLES BOURNE.'

Bath, White Lion,
Saturday noon.

"To this I received the ſame verbal anſwer as before, and Sir James ſet off for London. On my return from Bath, a Nobleman did me the honour of calling on Sir James Wallace, to inform him that I was in town, and to know his determination; but could not ſee him, as I ſuppoſe he was *cloſeted*, preparing that complaint of me to the Admiralty, which he mentions in his letter, without telling the public the *reception* it met with from that Right Hon. Board.—Without any further comment, I take my leave of a news-paper, where I muſt confeſs, I did not expect to meet Sir James Wallace: and whatever my own feelings might have urged me to, the opinion of many reſpectable officers of the corps I have the honour to ſerve in, has determined me to look upon him, much more as an object of my contempt, than my reſentment.

"CHARLES BOURNE."

Whitehall Chambers,
Saturday, Dec. 21, 1782.

Mr. SOLICITOR-GENERAL.

My Lords,

I AM of counſel for Mr Bourne, who comes before the Court, having pleaded guilty to the charge of publiſhing the paper, which your Lordſhips have heard read, and who has alſo been convicted of an aſſault upon Sir James Wallace, which indictment is laid variouſly.

The firſt count charges the aſſault to be with an intent to murder Sir James Wallace; that charge my learned friend who conducted the proſecution abandoned in the opening, and the defendant was acquitted of it. He now ſtands before your Lordſhips, convicted only of a common aſſault. When I ſay that it is a common aſſault, I do not mean to exclude any of the circumſtances which will now come before your Lordſhips upon the affidavits on either ſide, as it is an aſſault given by a gentleman in ſome rank in a military ſituation, to Sir James Wallace, who is alſo of the naval profeſſion, and under whoſe diſcipline and command it is very certain Mr. Bourne, the defendant, had been.

In the preſent ſituation, both with reſpect to the libel and to the aſſault, it is not therefore competent for me to ſpeak in a Court of Juſtice of Mr. Bourne, as a perſon innocent; certainly he is not ſo. It is, however, competent to me to ſtate ſuch circumſtances as have formed a ſituation, perhaps the moſt difficult and the moſt delicate that can occur in the compaſs of human life; that is, where the circumſtances are ſuch as create a conflict between the duty which a man feels he owes to himſelf, and which he knows he owes, as a ſubject, to the law of this country. My Lords, in the latter ſituation, I muſt admit that Mr. Bourne has offended, becauſe the moſt inſulting letters, the bitterest expreſſions, many ſpecies of the moſt opprobrious inſult, certainly are not a juſtification, in a Court of Law, of an aſſault and battery. When I think of this law, and of the circumſtances in human experience to which it is and muſt be applied by your Lordſhips ſitting here, I cannot help exclaiming, with the young man in the Scriptures, "*It is a hard ſaying, who can bear it?*" But the law is ſo, and by the laws of this country this gentleman now ſtands before your Lordſhips to receive your judgment.

Mr.

Mr. Bourne is repreſented to me as a young man much reſpected and honoured, and hopeful in his profeſſion; and he was never more reſpected and honoured than he is now by his friends, after all that he has done, adding only to it all that he has ſuffered. Even at this moment, no man is more loved, honoured, and reſpected by his corps; and I have ſeen the moſt ample teſtimonies to their opinion of the propriety and fitneſs of his conduct, even in this inſtance, which the law condemns.

Mr. Bourne's conduct now comes to be decided upon by perſons, who, however accurate may be their knowledge of the law, of its ſtrict principle, and of the neceſſity of its application, yet have commerce with the world; whoſe minds are ſtored with every liberal, and with every ingenuous ſentiment; who know what is in man, and who will not expect conduct degrading, and ſentiments abject, in the mind of a man whoſe life is honour, and whoſe proſperity and very being depend upon the ſpirit of a Gentleman.

My Lords, Mr. Bourne had the fortune (the misfortune, as he has found it) to be under the command of Sir James Wallace, who was the Captain of the Warriour, which ſailed from Portſmouth or Plymouth to the Iſland of Jamaica: it was in that ſervice, and upon that occaſion, that the ſeeds of all this miſchief were ſown. I won't go minutely into all the circumſtances of the caſe, as ſtated in the affidavits; your Lordſhips will hear them read; but they contain ſuch a hiſtory of the conduct of Sir James Wallace, that I had much rather your Lordſhips ſhould take it from the oaths of the witneſſes, than from the ſtate of it by an advocate. I know nothing of Sir James Wallace; I am ſure I do not mean to traduce him—he may be a man of eminent character, merit, and virtue; and there may be nothing reprehenſible in his conduct, for any thing I know, excepting what may be imputed to him reſpecting Mr. Bourne: but if this ſtory is not all fiction and invention, there never was, I believe, a ſuperior officer who ſo conducted himſelf to any perſon of the port and figure of a gentleman, bred in an honourable profeſſion, and not permitted, by the very duty of that ſituation, to bear unmerited and unprovoked inſult.

Your Lordſhips will find the conduct of Sir James Wallace, from time to time, was this; he inſulted Mr. Bourne with every menacing look, with every indecent expreſſion, with every threatening geſture; he came holding his clenched fiſt before him, from time to time, running it, as it were, in his face, and commanding him (and that for no offence, that this gentleman knows of, or that I can find any perſon ſtates) never to walk upon the ſide of the quarter-deck of the ſhip on which he was walking—that was his order, "You are never to do it." It was Mr. Bourne's duty, in that ſituation, to ſubmit, and not to mutiny; but I am told, by thoſe who are the beſt judges of the ſubject, that this conduct was ſuch a degradation and inſult, that if Mr. Bourne had patiently, quietly, and abſolutely ſubmitted to it, there was an utter end to his character, as a Gentleman. Your Lordſhips know, that in the etiquette of this profeſſion, and perhaps of ſome others, there are ſmall grievances, comparatively ſo, in the eſtimate of a porter, or of a man low in life, that are ten thouſand times worſe than death to a man of honour. Accordingly, your Lordſhips know that a man of honour is not ſo diſgraced in his character, fame, and memory, by having his head cut off, as he would be by being ſet in the pillory. I have heard that there was an inſtance of a great Prince once caning a General Officer; it diſgraced him irrecoverably, under the idea that it was a ſort of inſult to a military man, infinitely worſe than could poſſibly have been inflicted upon him by a ſevere puniſhment. I am inſtructed that the Court will find this ſort of conduct exiſted time after time, day after day, week after week, during the whole voyage, on the part of Sir James Wallace, relative to Mr. Bourne. Your Lordſhips will have the hiſtory of Mr. Bourne's remonſtrances upon the ſubject, and his inability to produce any explanation or apology, or any ſort of ſatisfaction, till he came to England.

I do not mean to defend it; nor do I mean ſeverely, and in all caſes, to ſay, that it muſt be uniformly and without exception condemned; I cannot defend as a ſubject, much leſs as a lawyer, the practice of duelling; I do not know that I can do it as a moraliſt: at the ſame time, I know that it is the concurrent opinion of almoſt all that have attended to this ſubject in Europe, that it is not poſſible to prevent the exiſtence of it, in certain

caſes. I know that a great Prince (your Lordſhips will probably recollect it was the preſent King of Pruſſia,) ſtated, that it was a ſubject worthy of all the potentates in Europe to hold a Congreſs upon, to try if they could prevent that practice, which, as he expreſſes it, ſpills the beſt blood in the world. I doubt much if it could ever be effected, and whether it would not produce more diſorder, outrage, and affront, more intolerable grievances, than the miſchief itſelf. Your Lordſhips, I am perſuaded, will go along with me in thinking, as your Lordſhips experience muſt have afforded abundance of inſtances in your memory to prove, that it is as impoſſible for an officer in the army to bear an affront, which is degrading to his honour, and contrary, of courſe, to all his future hopes and expectations, as it is impoſſible for a wiſe man to commit ſuicide. Your Lordſhips will conſider Mr. Bourne's conduct, under all the circumſtances of the caſe, and will judge, whether Sir James Wallace's behaviour to him did not require ſome ſort of juſtification or apology to Mr. Bourne; or elſe Mr. Bourne was undone.

Your Lordſhips will obſerve too, that preparatory to the libel of which Sir James Wallace complains, there was an inſinuation againſt Mr. Bourne, in a point which, if Mr. Bourne had conſented to admit the inſinuation as true, would have put an utter end to him; for Sir James Wallace, before the publication of the letter complained of, cauſed to be inſerted in the news-paper what I am going to read to your Lordſhips, and which provoked and cauſed this publication of the defendant. In the Morning Herald, December the 20th, 1782, there appeared this letter, ſigned James Wallace.

" Mr. Editor,

" UPON my arrival in town yeſterday, I was informed that a publication had appeared in your paper of Monday laſt, caſting very pointed, ſcandalous aſperſions on my character, of which, from ſome late tranſactions, I ſuppoſe Lieutenant Bourne, of the marines, to be the author. The whole of Bourne's ungentleman-like behaviour, which I have laid before the Admiralty, is too long for a news-paper publication; I ſhall therefore only ſay, that he has never come once to the point, either at Jamaica, Bath, or London; and if he had, I can demonſtrate that I was prepared for him at each place, and might have prevented all his vain boaſtings, and falſe aſſertions."

Your Lordſhips ſee this letter refers to a prior publication. I have an affidavit of Mr. Bourne, declaring that he neither wrote it, publiſhed it, or even knew of it; and that in truth he is as perfectly innocent of it as your Lordſhips, to whom I am ſpeaking. Now your Lordſhips ſee what ſort of a provocation this is on the part of Sir James Wallace, who begins the libel. You cannot read this paper without ſeeing, nor can my learned friend trouble the Court with frivolous criticiſms upon it, as if this were not a direct charge of cowardice upon Mr. Bourne: I am ſure his good ſenſe will diſdain ſuch an obſervation.—When Sir James Wallace ſays " he never came to the point, either at Jamaica, Bath, or London, and, if he had, I was prepared for him at each place," it admits of no other interpretation but this;—Mr. Bourne has abuſed me in the news-paper; that is the courſe he chuſes to proceed in: but had he choſen to attack me as a gentleman, as a man of honour, and a ſoldier, I was ready for him at Jamaica, Bath, and London:—but he is a coward, a mean daſtardly fellow; he never dared come to the point with me any where; and therefore I poſt him as a vain liar, boaſter, and falſe aſſertor.—This is the plain language of this paper, and this is the firſt beginning of the libel. I do not mean to ſay that this is a juſtification before your Lordſhips of Mr. Bourne's ſtriking Sir James Wallace with a ſtick; but if Sir James Wallace, or any man alive, had admitted himſelf the publiſher of ſuch a libel upon a man of honour, and that man had knocked him down never to riſe again, I am perſuaded there is not a man of honour or ſpirit in the kingdom that would have blamed him. Your Lordſhips will not ſay that it is an aſſault that the law will juſtify; but the law, or at leaſt the adminiſtration of it, gives an indulgence to the infirmities, much more to the generous feelings and ſentiments, of a man; without which feelings and ſentiments, he does not deſerve to live, or breathe the common air.

Now ſuppoſe Mr. Bourne, an officer, a ſoldier, a man living in his profeſſion, intending and hoping to riſe by it, had quietly ſubmitted to this accuſation, which Sir James Wallace publickly

publickly makes to all the world, "this man talks, at Bath and London, of his proweſs; he never dared come to the point with me; I was always ready for him." If he had taken no notice of this, what would have become of him? Do not your Lordſhips know, that he muſt have been drummed out of the corps inſtantly; that no officer could rank with, or ſpeak to him, afterwards?——Then after this Mr. Bourne writes a letter, ſtrong, paſſionate, intemperate, juſt ſuch a one as any man would have written, whoſe mind was boiling with reſentment, (as it could not do otherwiſe, if he had the feelings of a man) excited by Sir James Wallace's publication, which was the moſt inveterate, and the moſt keen and pungent poſſible, to a man of honour; Mr. Bourne writes that which the law reprobates; though, in my apprehenſion, it is that which any man in his ſituation would have done—whether I ſhould have done it, or no, I do not pretend to ſay: but this I know, that, if I had not done it, I ſhould have hid my diminiſhed head forever, and never have gone into ſociety without thinking, that I ſaw, in the countenance of every man I met, a condemnation of my conduct—I think I ſhould ſo have felt. But Mr. Bourne has ſtruck Sir James Wallace; he has been guilty of an aſſault; and I do not mean to ſay, (becauſe it would not be at all of a piece with that which I have been offering to your Lordſhips) that to ſtrike Sir James Wallace, whether with a great ſtick, or a little one, is like a bruiſing-match among porters—certainly not; it has a different conſideration. Then your Lordſhips muſt conſider what ſituation he was in. With reſpect to this, you will find a hiſtory referable to it, which neceſſarily excited it. Unfortunate and unhappy as it is, it could not be otherwiſe; for he was called upon, (as I hope I have ſhewn; and your Lordſhips, I am ſure, muſt feel,) that he was called upon to take ſome earneſt, ardent, and vigorous means, to rid his character of a blot, which was to cover it with obſcurity for ever, if he did not do it. He applies to Sir James Wallace, from time to time, for an explanation of his conduct. At Bath, when he aſks an explanation, Sir James being ſent to; at one time he ſends an apology, that he will not ſpeak to him; he is with ſome ladies. He afterwards meets him in the ſtreet, and expoſtulates with him upon his conduct; he pulls out a piſtol, cocks it, and ſays, "If you ſpeak to me, I will blow your brains out immediately." Mr. Bourne ſaid, this was very much out of courſe; he would meet him in a private way, according to the rules of honour, among gentlemen in their profeſſion. After this (for this has made great noiſe in the profeſſion) theſe publications are delivered to the world; people's minds are agitated upon the ſubject; the friends of Sir James Wallace, I ſuppoſe, taking his part, and the friends of Mr. Bourne taking his. Mr. Bourne caſually meets Sir James Wallace in the ſtreet; Mr. Bourne accoſted him, at leaſt he ſtates to me, (and I think it was proved on the trial) that Mr. Bourne accoſted him, with ſome deſign of walking with him a few paces; and in that walk I underſtand there was ſome converſation, ſuch as your Lordſhips would naturally expect. Sir James Wallace ſpoke to him at a diſtance; treated him with neglect; upon which, Mr. Bourne, feeling that he was reprobated under Sir James Wallace's name, to all mankind, as a poltroon, and a coward, he thought there was no way left him, but to inſult Sir James Wallace, and to declare to all the world, I muſt either die, or I muſt live with ſome credit; I muſt have an open, unequivocal, public, explicit declaration. I will, in truth, inſult this gentleman, by ſtriking him; for I cannot be delivered from the imputation of being a coward, but by my doing an act, which muſt, in its nature, neceſſarily bring my courage, honour, and ſpirit to the teſt.

I know, very well, the conſequence of this way of putting it, but I am not at all afraid of thoſe conſequences. Your Lordſhips may ſay; why, this tends to a direct violation and breach of the peace;—this gentleman is indicted for a common aſſault, and you are making it a great deal worſe.——I cannot ſtate to your Lordſhips half of Mr. Bourne's caſe, and ſuppreſs the other half; he would not wiſh one tittle of it to be ſuppreſſed. I know he is extremely ſorry that it ſhould happen, that he ſhould be obliged to put himſelf in a predicament to offend the laws of his country, about which I believe he has felt as much unwillingneſs, as any man upon earth; yet he does conſider, and your Lordſhips muſt, I am ſure, allow, that he cannot but conſider the ſentiments of honour, as inextinguiſhable, as invincible, as abſolutely inſeparable from his character;

character; he muſt be a man of honour, or he can be nothing; he muſt either live to noble ends, and to proſecute thoſe ends by honourable means, or he cannot live at all:—that is his caſe. He ſtruck Sir James Wallace, and Sir James Wallace appeals to the laws of his country for redreſs: I do not blame him for that; Sir James muſt judge for himſelf. That he has judged erroneouſly, I am ſure, I do not mean to ſay; he is the beſt judge of his own proprieties: but at the ſame time, he muſt permit my client alſo to judge of his. Your Lordſhips will hear the affidavits: they are public and notorious; the principal part of them are in print; every body knows the circumſtances; and of Mr. Bourne's being indicted, tried, and convicted, for ſtriking Sir James Wallace: All the military men in the kingdom know it; and yet, with the knowledge of all theſe facts, I have their reſolutions, containing the unanimous judgment of the officers of his corps upon the ſubject, expreſſing the greateſt reſpect for the character of this gentleman:—I do not mean, that they have expreſſed any approbation of a violation of the laws of their country, or any thing like it: but expreſſing their great attachment to, and regard for this gentleman, as a man of honour; who, if he has been betrayed into a violation of the laws of his country, it has been by the ſentiments of virtue.

This is the nature of the caſe, which your Lordſhips will hear proved by the affidavits. I will not trouble the Court longer, by entering more into the detail of it, for this reaſon; I ſhall be followed upon this caſe, very momentous as it is to my client, by a learned friend of mine, who feels more accurately than I do, upon all ſubjects; who, I am ſure, will expreſs himſelf with much more pathos, upon this ſubject; who having been an ornament of the profeſſion of arms, even in both its branches, belonging to the corps of Sir James Wallace, and to the corps of Mr. Bourne; it has come to him, at laſt, to adorn another profeſſion; and I am very ſure, as he is capable of ſpeaking upon this, with more accuracy, as well as with more force, that I ſhould do great injuſtice to Mr. Bourne, to detain your Lordſhips any longer.

[*The Affidavits on the part of Lieutenant Bourne, read.*]

The Hon. Mr. ERSKINE.

I HAVE likewiſe the honour to attend your Lordſhips as counſel for Lieutenant Bourne; and under all the circumſtances of the caſe, as diſcloſed by the affidavits which have been read, however reprehenſible they may be in ſome parts (which I ſhall ſpeak to by and by), I build my principal hope of a mild ſentence, upon the perſuaſion that much more will be ſecretly felt by the Court than may decently be expreſſed from the Bar; for, although I am convinced that your Lordſhips have all thoſe nice ſenſations which diſtinguiſh men of honour from the vulgar, and that your genuine feelings for the defendant muſt be rather compaſſion and approbation than reſentment, yet I cannot addreſs myſelf to your Lordſhips, ſitting on that Bench, and cloathed in the robes of magiſtracy, in the ſame language by which I think I could inſure your favour to my client in any other place. It is indeed very unfortunate for the gentleman whoſe cauſe I am defending, that your Lordſhips are bound, as Judges of the Law, to conſider that as a crime in him againſt the ſociety in which he lived, which yet, if he had not committed, that very ſociety would have expelled him, like a wretch, from its communion; and that you muſt ſpeak to him the words of reproach and reprobation, for doing that which, if he had not done, your Lordſhips would ſcorn to ſpeak to him at all, as private men. Surely, my Lords, this is a harſh and a ſingular ſituation. In other caſes, where a ſubject, in diſobedience of the laws, becomes the aſſertor of his own rights, or the avenger of his own wrongs, he can have no poſſible plea in mitigation; he can have no anſwer when he is told by the Judge who puniſhes him, "Sir, the law which you have broken would have protected you in your obedience to it; the law, which you have broken, would have reſtored to you that property which you have retaken by force." But in this caſe, as my friend, the Solicitor-General, has very ably ſtated, ſo very whimſically is our ſociety conſtituted, that your Lordſhips cannot, by your judgment, protect men in their obedience to that law, for the breach of which you puniſh them. You cannot do this, becauſe you cannot grant an attachment againſt public opinion, or inſure to a man that he ſhall not be excluded from ſociety, or at leaſt forfeit

forfeit its reſpect and eſtimation, only for making the law the rule of his conduct. This s a fatal error in the inſtitution of any community; but it nevertheleſs exiſts in our own. Surely that law which oppoſes the univerſal voice of the whole community, ought either to be repealed, as erroneous in its principle, or elſe be inforced by ſuch regulations as muſt forever exclude the poſſibility of its being thought honourable to diſobey it. But this deſirable purpoſe cannot juſtly be obtained by the vindictive puniſhment of individuals, till by wiſe laws a general change in the minds of men can be obtained upon this ſubject. I profeſs to think with my worthy friend who ſpoke before me, that the practice of private duelling, and all that behaviour which leads to it, is a high offence againſt the Laws of God; and I agree with that great Prince he mentioned, that it is likewiſe deſtructive of good government amongſt men; a practice certainly unknown to the moſt refined and heroic people, which the revolutions of time and manners have produced in the world, and by which the moſt amiable man in ſociety may be loſt by an inglorious death, and depending upon mere chance. But though I feel all this, as I think a Chriſtian and a humane man ought to feel it, yet I am not aſhamed to acknowledge, that I would rather be pilloried by the Court in every ſquare in London, than obey the law of England, which I thus profeſs ſo highly to reſpect, in a caſe where that cuſtom which I have reprobated warned me that the public voice was in the other ſcale.

My Lord, every man who hears me feels that ſo would he: for without the reſpect and good opinion of the world we live in, no matter upon what foundation it is built, life itſelf is a worſe impriſonment than any which the laws can inflict; and the cloſeſt dungeon to which a Court of Juſtice can ſend an offender is far better, with the ſecret pity and even approbation of thoſe that ſend him there, than the range of the univerſe, with the contempt and ſcorn of its inhabitants. In the little that I have therefore to ſay, my ſingle aim muſt be to convince your Lordſhips, that the defendant was placed by the proſecutor in a ſituation which left him no alternative between perſonal infamy and that diſobedience of the law, of which he acknowledges, with humility and ſubmiſſion, that he has been guilty: that the feeling of a man of honour, jealous of his reputation, animated and directed all his intercourſes with Sir James Wallace; and that in no one of them has he violated any of thoſe rules of military ſubordination, which, beſides the municipal laws of the country, are laws binding upon ſoldiers. The character of the defendant, as it has been ſtated to your Lordſhips by theſe affidavits, and by many more that are behind, and have not been read, are moſt material in this cauſe; for it has been truly ſaid, that Sir James Wallace has a character juſtly and honourably acquired in the ſervice of his country; and if Lieutenant Bourne were to appear here before your Lordſhips an obſcure unknown man, and the proſecutor with that reputation in the other ſcale, it is eaſy to ſee how, in the minds of men, the balance would turn; therefore we thought it our duty to file the affidavits of all thoſe officers with whom and under whom he ſerved, who all unite in giving him ſuch a character for bravery, for ſobriety, for diligence, for the accurate execution of his duty, as muſt lead your Lordſhips to think that he would not, unprovoked, have been guilty of ſuch breaches of diſcipline as are imputed to him. I will read only abſtracts of many of the affidavits which have been filed, and which muſt make him appear an object of pity to the Court. A man who has behaved nobly ought not to be puniſhed without abſolute neceſſity. Lieutenant Markett ſays, he ſaw Lieutenant Bourne, in the action with the French fleet, upon that memorable day, the 12th of April, when he was quartered in a part of the ſhip the moſt expoſed to the fire of the enemy; and that he acquitted himſelf with that heroic intrepidity, that cool, reſolute, and undaunted execution of duty, which ſo effectually increaſes the ardour of the men, and renders the officer the admiration of his profeſſion.

Lieutenant Inman, who ſailed with him for eighteen months, ſwears, that under all the known calamities of the Hector's unfortunate voyage from Jamaica, in action ſurrounded by carnage, and ſuffering beſides all the horrors of ſickneſs, hunger, and thirſt, and in conſtant expectation of diſſolution, the ſpirited and manly reſolution of the defendant diffuſed perſeverance to all around them.

A man in poſſeſſion of ſuch a character as this, juſtly acquired, will not conſent to ſacrifice it to the pride of any man: it is a great and a ſacred pledge; and he to whom God in his providence has given it, deſerves every ſort of reproach, if he parts with it in a light cauſe.

The profecutor, and his counſel, who have heard theſe affidavits read, and theſe panegyrics upon the defendant, may, perhaps, impute the introduction of them (as Sir James Wallace has done in his letter) to oſtentation and vain-glory: but let them remember, that though modeſty preſcribes the concealment of good actions, upon a principle, that the internal conſciouſneſs of them is far better than the approbation of others; yet, that the principle does not apply to caſes where character is traduced by ſlander. A man then owes it to himſelf, to the community of which he is a member, and to his friends and relations, who fall in eſtimation along with him, to avow, and to glory in theſe actions, which men more fortunate in eſcaping from detraction, ought to conceal as aſſiduouſly as crimes: the proſecutor, therefore, can derive but little conſolation from expoſing a ſuppoſed vanity, which has its ſource in his own injuſtice. With this character, juſtly acquired in the manner I have ſtated to your Lordſhips, Lieutenant Bourne came on board Sir James Wallace's ſhip, anxious to ſerve his King and his country, in very perilous times; and feeling that he could eſſentially ſerve them, becauſe he had that within him which told him he was worthy the place in which he ſtood.

I have ſeen but one part of the proſecutor's affidavit; I caſt my eye on it accidentally; and it was with no ſmall aſtoniſhment that I found it ſet forth, as part of the diſcipline of the navy, That a Captain of a man of war has a right to make an order, confining an officer to one ſide of a ſhip's quarter-deck. Unqueſtionably, he may deſire every officer, whoſe duty it is to walk the quarter-deck, to go to the top of the maſt of the ſhip: but he can not do that without an adequate cauſe, and without ſubjecting himſelf to the diſgrace and puniſhment of a Court-martial. I have had the honour to ſail with a man, who is an honour to that profeſſion; a gentleman, I believe, the moſt accompliſhed that this nation, or world, can produce; and who has the honour to be nearly allied to your Lordſhip. Under him I learned what idea ought to be entertained upon this ſubject, and what reſpect ought to be paid to officers in all ſtations; and the reſult of what I ſaw there, joined with my own original feelings, is this: That although I was placed on board his ſhip, to reverence him as my father, by the command of my own; and although at this hour I do reverence him in that character; yet I feel, that if he had treated me in that manner, I ſhould not have made Jamaica or Bath the limits of my reſentments, but would have fought him through all created ſpace, till he had anſwer made, and done me juſtice. And here I poſitively deny, and Sir James Wallace can bring no Captain of character that will ſay, that a man, by name, without any cauſe ſtated, ſhould not walk upon the ſide of the deck, with Sir James Wallace the Captain. If Lieutenant Bourne had ſubmitted to that order, he could have walked upon the ſide of the deck of no other ſhip; he could have ſpoke to no man, at ſea or on ſhore; it would have been for ever after but of little conſequence where he walked; his character, as a ſoldier, had been loſt; his occupation had been gone. But is this all? Did the inſult end there? Is it not ſworn by the defendant, Mr. Bourne? Is it not confirmed by the oath of Lieutenant Monke, who ſtands before the Court, without any reproach; an officer in the ſame ſhip, and who ſwears he was preſent when Sir James Wallace came out of his cabin, with his eyes darting fire, and clenching his fiſts in Mr. Bourne's face, with every geſture of reproach?

My Lords, putting the infirmities of human nature out of the queſtion, which are ſo ſtrong, that I confeſs I almoſt forget myſelf when I am ſtating them; what muſt that unfortunate man have felt; and how does he deſerve puniſhment for his behaviour upon that occaſion? Sir James Wallace aſſaulted Mr. Bourne, an officer under his command. Mr. Bourne's behaviour, upon the occaſion, was all humility, and all reſpect. Sir James Wallace could have no juſtification, and it is impoſſible he can offer any reaſon for ſuch conduct. If Lieutenant Bourne had inſulted him as a private man, ſurely it was not very manly, or conſiſtent with that character Sir James Wallace had ſo long maintained in the world, to attack him, when he could not, without mutiny, have retaliated. If it was a breach of the diſcipline of the ſhip, were not the laws of military diſcipline open to give him redreſs? Mr. Bourne ſubmitted to thoſe laws; and during a long and painful voyage, bore, with reſignation and patience, all the dreadful treatment I have ſtated to your Lordſhips. If Mr. Bourne, upon the arrival of the ſhip at Jamaica, had done what the affidavits ſtate him at a ſubſequent period to have done, I ſhould not have defended him: but he applies to the Admiral, repreſenting his own and Sir James's conduct in the ſhip; he required,

quired a Court-martial upon himſelf, conceiving the proſecutor muſt have felt he had been guilty of ſome breach of diſcipline in the ſhip; and therefore he calls upon the Admiral, commanding in chief, to bring him to a regular and fair trial, in order that if he had miſconducted himſelf in the character of an inferior officer, the law might determine upon it. He likewiſe applied for a Court-Martial upon Sir James Wallace, for a breach of duty, as Captain; but inſtead of receiving that redreſs which he was entitled to upon that occaſion, he was removed by the Admiral into another ſhip: he was then no longer the immediate ſubordinate of Sir James Wallace; and, I may venture to ſay, that there is no officer can come forth and ſay, that the ſubordination of the ſervice extends to matters of honour between officers ſerving in different ſhips.

When thus removed into another ſhip, he met Sir James Wallace on ſhore; and, as he is not before the Court for a breach of the peace in Jamaica, I have a right to ſay, he demanded that ſatisfaction which one gentleman has a right to demand when he has been injured by another. His temper could not be reſtrained; he ſeized his ſword, ſuggeſting to Sir James Wallace, that by the ſword alone it ſhould be ſettled. Sir James told him, he ſhould hear from him on the ſubject: but he did not hear from him, except that he heard from every mouth, that Sir James Wallace repreſented him as the baſeſt of mankind; and that, wherever he went, he found he was the object of reproach. There are ſome injuries which even Chriſtianity doth not call upon a man to forgive, or to forget; becauſe God, the Author of Chriſtianity, has not made our natures capable of forgiving or forgetting them. When he came to Bath, he therefore ſought Sir James Wallace, not to aſſault, or to piſtol him, but to require a meeting with him, that the matter might be ſettled according to the Laws of Honour. Sir James Wallace's only anſwer was, "that it was very well;" and Lieutenant Bourne not chuſing to break in upon the Ladies, when he found Sir James Wallace would not meet him, he wrote the firſt note, which has been read in the affidavit, and in which he certainly does ſay, if Sir James Wallace perſiſted in not ſeeing him, it would only confirm him in the deſpicable opinion he had always entertained of his character. To this letter there was no anſwer, but "Very well:"—he wrote him another letter of the ſame ſort, and the anſwer was again, "that it was very well." Mr. Bourne had then done enough; and if Sir James had thought fit to make the diſcipline of the ſhip his anſwer to theſe defiances, I am afraid I ſhould have had no plea in mitigation here. But inſtead of ſtanding publicly on his ſtation, as a ſuperior officer, he went about ſtill ſlandering the private character of the defendant as a coward; which left him no courſe, but to take the firſt opportunity of meeting him, to demand an explanation of his conduct. He accordingly met him in a ſtreet at Bath, and accoſted him with that civility which is due from one gentleman to another, even in aſking reparation for the moſt ſerious wrongs: but the interview ended in Sir James Wallace's drawing a piſtol upon him, and ſoon after leaving Bath.

I now come to that part which is material for the attention of the Court: Mr. Bourne had thus moſt undoubtedly ſo far vindicated his honour; and if he had gone farther, he would have been an object of reproach: he had inſiſted upon his adverſary's coming to the point with him, and he would not; he had met him, and the conſequence was, he was reſiſted with a piſtol. Sir James, with the conſciouſneſs of all that had paſſed at Bath, wrote that letter which the Solicitor-General has already read; and this part of it is remarkable: he charges Lieutenant Bourne, of the marines, to be the author of the paragraph reflecting on him; yet he does not ſend to him to know whether he was in fact the author of it, or not: he preſumes it at once, becauſe he knew in his conſcience that there was great reaſon for Mr. Bourne to write that paragraph; and, notwithſtanding that conſciouſneſs, he publiſhed in anſwer, "that he had never come once to the point, either at Jamaica, Bath, or London; and that, if he had, he could demonſtrate that he was always prepared for him at each place, and might have prevented all his vain boaſtings and falſe aſſertions." My Lords, this letter puts an end to all Sir James Wallace's defence. If he had ſaid, "I think it neceſſary to inform the public, that Lieutenant Bourne, an officer in my ſhip, having conducted himſelf with indecency to me, in violation of thoſe rules of ſubordination and diſcipline, which, as an officer, I hold ſacred, I have refuſed to meet him: I feel myſelf brave enough

enough to refuſe to meet him: I think my character is ſufficiently eſtabliſhed, not to be afraid to tell him, that he has no right to that ſatisfaction which the Laws of Honour dictate."—But Sir James Wallace does not ſay that; that Lieutenant Bourne had been purſuing him, without an adequate cauſe of quarrel; he does not ſay that Mr. Bourne had been offending againſt diſcipline, or had turned it into a private quarrel; he does not make that defence, which, in the mouth of an officer, would be a complete one; but he ſeems to admit an expectation that Mr. Bourne would call upon him for the redreſs of injuries, and throws out a challenge to him in return: "I was," ſays he, "at all times prepared to meet him." Here he forſook his character, as ſuperior officer; he made no plea of diſcipline: and indeed, if he had thought that the only offence that Lieutenant Bourne had taken at him was in conſequence of the diſcipline of the ſhip, can your Lordſhips ſuppoſe that he would not have held forth this to the public? And can there be a better evidence againſt a man than his own publication upon the cauſe of a quarrel in which he is engaged with another?—Mr. Bourne's anſwer to this letter is called a libel: but I ſay it was a moſt meaſured anſwer to a libel on himſelf. He does not make uſe of one opprobrious epithet againſt Sir James Wallace: he ſat down merely to write what had paſſed; and conſequently, if he was to anſwer the letter at all, he muſt anſwer it truly. They were not written to the public, but to Sir James himſelf: it was he who firſt appealed to the multitude by a news-paper; which compelled Mr. Bourne to make theſe private letters public ones. It is hardly poſſible to underſtand any writing, when it is ſo confounded with unneceſſary innuendos; I ſhall therefore read that for which Lieutenant Bourne is proſecuted, and which was inſerted in the news-paper two days after the Proſecutor's letter to the Printer.

(*Mr. Erſkine read the letter.*)

If a man will make a private quarrel the object of public attention, and miſ-ſtate that private quarrel, I put it to the feelings of every man breathing, whether there be any courſe left for the other, but to give a fair repreſentation of it. That repreſentation appears to be contumelious againſt the perſon firſt publiſhing, ſo as to make it a libel upon him when publiſhed. It is of his own ſeeking; it would have been no libel in a civil action; for in the caſe I had the honour to be in, the other day, before your Lordſhip, where Mr. Brand, an eminent ſurgeon, brought an action againſt Sheldrake, a truſs-maker, for a libel, your Lordſhip deſired the Jury to take out of the publication of Mr. Brand, Sheldrake's being an anſwer; and told them, that if they found that pamphlet of Mr. Brand's to be a perſonal libel upon Sheldrake, it was a complete juſtification of the defendant; for that, though the law would puniſh the violation of the public peace, yet no man had a right, as an individual, to apply for a compenſation, under ſuch circumſtances; and therefore, if the Jury had not been convinced that Mr. Brand's pamphlet was no libel, he would not have had a verdict. Your Lordſhips will therefore put Sir James Wallace wholly out of the preſent queſtion: he is, indeed, as much ſo, as if he had no exiſtence; and your Lordſhips will only conſider what puniſhment a man deſerves, who merely violates the public peace, by expoſing another man, who is no party, before the Court. Lieut. Bourne ſays, he wrote this merely to vindicate his honour, which, I do believe, was his ſingle motive upon the occaſion. I ſhall not read theſe notes; it is not pleaſant to read any thing that conveys an imputation upon another: but in mitigation of this gentleman's puniſhment, I beg your Lordſhips to conſider, that he was called out before the public, by Sir James Wallace himſelf, and therefore was obliged, if he wrote at all, to ſtate freely what had paſſed between them; and if he had been ſilent altogether, his character, from that moment, was utterly undone, and loſt; for if that paper of Sir James Wallace's, with all his reputation, to give it weight, had ſtood againſt Mr. Bourne, without any anſwer, no officer that ever knew him would have known him any more. Under theſe circumſtances, I think the libel is mitigated to ſuch a degree, that the defendant can have little to apprehend, from the judgment of the Court. With reſpect to the aſſault, it appears by this very letter, that notwithſtanding Mr. Bourne had come up,—I am ſorry to ſtate a breach of the peace, by way of mitigation; but he is not before the Court for that—although he had come up to Sir James Wallace, and had ſhaken his cane over his head, for his refuſing to anſwer him as a gentleman; yet, in three days afterwards,

wards, Sir James Wallace, without calling upon him to anſwer for this reproachful behaviour to him, publiſhed to the world, that Mr. Bourne had refuſed to meet him: Mr. Bourne therefore, when he ſaw this publication, could not but hold this language to himſelf. "I have held my cane within five inches of his temples, and yet he ſays I have not come to the point with him. What ſhall I do?" He poſitively ſwears, that in almoſt every company he came into, in London, he found Sir James Wallace was ſtill holding forth to the public ear, that Lieutenant Bourne was a ſcoundrel, and a coward, and never would give him the ſatisfaction, which he affected to ſay his honour required. While things were in this ſituation, and while Mr. Bourne was defending himſelf, in this Court, againſt the libel I have read; he happened to be walking with this gentleman who ſits by me, and whoſe affidavit is filed, not thinking of Sir James Wallace, and not armed with any weapon; for Mr. Coombes confirms him in that oath, that he had not even a cane; when, ſeeing Sir James Wallace come up, he took the cane out of Mr. Combes's hand; a ſmall cane, with a white head to it; and went up to Sir James Wallace, not like that aſſaſſin which the indictment very unfairly and diſhonourably ſtated him; but like an injured man of honour; and ſaid to him, "Sir James Wallace, I now deſire you will explain your conduct, and juſtify my character; my honour, as an officer, is concerned in it."

Court. You are miſtaken; I believe the firſt accoſting was, "You ſcoundrel! Sir James Wallace!"

Mr. *Erſkine.* If your Lordſhip will allow Mr. Combes's affidavit to be read, your Lordſhip will ſee I am not miſtaken; and during the trial of the cauſe, we offered Mr. Combes's evidence: but it was thought by the Court, that it would come better to the point, in mitigation, ſince it could not alter the verdict. Mr. Combes poſitively ſwears, that when he took the ſtick out of his hand, he ſaid, "There is Sir James Wallace;" and that he went up to him, and ſaid, "I inſiſt upon your coming to an explanation with me." Mr. Combes did not hear the converſation between them: but he poſitively ſwears, there was a minute's converſation between them; and he ſwears, as poſitively, that Mr. Bourne's behaviour to Sir James Wallace was tempered with the utmoſt civility. Sir James treated him, in return, with the utmoſt contempt; and held him at arm's length, as he had done before. Here, therefore, I muſt plead for the infirmity of human nature, and beſeech your Lordſhips once more to conſider what the honour of an officer is—conſider that, and ſay what puniſhment this gentleman deſerves. You have before you, a young military man, jealous, as he ought to be, of his fame and honour, treated with the groſſeſt indignity by his ſuperior officer; ſmothering his honeſt reſentment as long as the ſuperior duties of military ſervice required that painful ſacrifice; and afterwards purſuing the man who had diſhonoured him, with a perſeverance, certainly in criminal oppoſition to the law, but in obedience to what I may, without offence even here, term generous infirmity, in his nature, nouriſhed by the long eſtabliſhed, though erroneous, cuſtoms of the world. The proſecutor, inſtead of relying wholly upon the law for his protection againſt this illegal violence, acts a double part: he is the man of honour before the public; and ſo far from holding forth Mr. Bourne as a violater of the peace, conſiders him, on the contrary, as deficient in the common reſentments of a gentleman; and writes a challenge to him, in a common news-paper; for I aſſert that letter of his, publiſhed in the Herald, to be a defiance, and a challenge. The defendant, ſtung to the ſoul with a miſrepreſentation, which he knew was ruinous to his fame; and Sir James Wallace having, by the channel of a common news-paper, appealed to the public, to judge of the quarrel between them; he put in his anſwer, before that tribunal to which the proſecutor had, himſelf, thought fit to give juriſdiction in the cauſe: and his anſwer was without reproach, it was nothing but a fair and true repreſentation of thoſe circumſtances, which the proſecutor had miſrepreſented. Sir James Wallace, inſtead of replying before that judicature, which he himſelf had erected, indicts Mr. Bourne as a libeller, for not ſubmitting to that eternal infamy, which muſt have fallen on him, if the proſecutor's letter had remained unanſwered; and although he had ſhaken his ſtick over his head, at Bath, for refuſing to anſwer him as a gentleman, he ſtill continued to hold him forth as a coward, who would never come to the point; refuſing him, at the ſame time,

all acceſs to his perſon, by which an explanation could be obtained. Thus circumſtanced, the defendant felt that there was but one ſtep which could effectually put his reputation, which is the jewel of every man, much more of a ſoldier, out of the reach of that ſlander, from the proſecutor, to which he had been ſo long ſubject; namely, by fixing that diſgrace upon him, which a blow, among gentlemen, has been hitherto thought to carry along with it; and which aſſuredly renders it difficult for the perſon receiving it, to aſſert, that his adverſary has not come to the point. For that act, Mr. Bourne thinks there is no apology due to Sir James Wallace, but every ſubmiſſion and humiliation before your Lordſhips, as the Judges of his country. It is the law, and not Sir James Wallace, that has been offended; your Lordſhips will unqueſtionably put him totally out of view, in fixing the puniſhment; conſidering merely what injury the public ſuſtain by ſuch a violation of the peace, whoever may be the object upon whom it is made. It would be indecent in me to dictate, or even to inſinuate, what I conceive in this caſe to be the extent of that injury, or the proper expiation for it. I rely with confidence upon the juſtice, the humanity, and the honour of the Court.

Mr MACNALLY.

My Lords,

I AM alſo of counſel for the defendant.—I ſhall confine myſelf to a few points, and ſhall be extremely conciſe in diſcuſſing them.

It appears, in reſpect to the libel, that the original paragraph, which appeared in the Morning Herald, was anonymous, and the defendant has poſitively ſworn it was written and publiſhed without his knowledge.

In anſwer to this paragraph, Sir James Wallace, as appears by the affidavit of Mr. Barr, printer of the Morning Herald, ſends by Mr Sleigh his attorney, his ſolicitor in this cauſe, and his brother-in-law, (as I underſtand) that letter which has been read to your Lordſhips, and which contains every eſſential to conſtitute a libel—It reflects upon the character of the defendant—it raiſes an imputation of cowardice againſt him, by aſſerting he never came to the point—it verbally holds out a challenge—it tends to a breach of the peace, when a ſoldier ſpeaks of having never come to the point. Your Lordſhips will put no other conſtruction on the expreſſion, than that it means the point of a ſword; and, that the meaning might not be miſtaken, the words were printed in italics. This paragraph having all theſe eſſentials of a libel, and being thus publiſhed in a news-paper, Sir James Wallace comes here, and demands judgment of your Lordſhips; though it will, I am perſuaded, appear clearly to the Court, that he was the original aggreſſor in this point; and of courſe, that you will not conſider him as having any claim upon juſtice. Sir James Wallace has choſen to ſeek for legal juſtice by indictment. Had he applied to your Lordſhips for an information, I am of opinion, and I found that opinion, from what I have heard fall from the Bench on a former occaſion, that the Court would not have interfered, by granting that extraordinary mode of proſecution: for I recollect, in the caſe of Macklin, againſt ſix perſons who had conſpired againſt him, he applied to the Court for an information againſt thoſe ſix; but it appearing that two of them, Reddiſh and Sparkes, had been attacked in the public papers by Macklin, in a letter with his ſignature annexed; as the letter appears in this caſe with the ſignature of Sir James Wallace; and this letter, as in the preſent caſe, having been publiſhed in conſequence of ſome anonymous paragraphs; the Court refuſed the information againſt thoſe two, though they were the ſuppoſed authors of the paragraphs.—This is analogous to the caſe here. Sir James Wallace ſtands exactly in the ſame predicament with Mr. Macklin: he replies to an anonymous paragraph imputed by him to Mr. Bourne; in the other caſe Mr. Macklin replied to an anonymous paragraph imputed by him to Reddiſh and Sparkes. Your Lordſhips will correct me if I am wrong. I ſtate from memory; for I could not procure any written nor printed report of the caſe I allude to; and what fell from your Lordſhip came in collaterally: but, if my recollection be accurate, your Lordſhip ſaid, that "as to Reddiſh and Sparkes, Macklin having appealed to the juriſdiction of the public, you would leave him to that juriſdiction; and the Court would not interfere by granting the extraordinary mode of information."—Now, my Lords, I humbly apprehend that the ſame principle which induced the Court to refuſe interpoſing its extraordinary

traordinary aid in the caſe I have ſtated, will have this effect in the preſent caſe, that it will go far in mitigation of puniſhment; becauſe your Lorſhips will ſee that Sir James Wallace is the original aggreſſor.

I have no doubt, my Lords, but that, taking the whole of the caſe into conſideration, the Court will conclude with me, that the aſſault was the natural reſult of this libel, publiſhed by the proſecutor.

I ſhall take the liberty to ſtate, that it appeared upon the trial, though I did not obſerve it mentioned in the report of the evidence read by the learned Judge who tried the cauſe, that Sir James Wallace, when he came to give his teſtimony, ſpeaking of Mr. Bourne, was guilty of unpardonable illiberality:—Forgetting the dignity of the place where he then ſtood—forgetting the reverence he owed the Judge; and forgetting the reſpect due to himſelf and to the defendant as gentlemen and officers, he called Lieutenant Bourne a ſcoundrel!

Mr. *Juſtice Buller.* I do not remember his making uſe of that expreſſion, only that Lieutenant Bourne called him ſcoundrel.

Mr. *Macnally.* He ſaid, he beat him with a ſtick, like a ſcoundrel as he was.

Lord *Mansfield.* Did he ſay ſo?

Mr. *Juſtice Buller.* I don't remember any ſuch expreſſion.

Mr. *Solicitor-General.* He turned this way, and ſpoke in ſo low a tone of voice, that your Lordſhip did not hear him.

Mr. *Macnally.* My reaſon for urging this expreſſion to your Lordſhips attention, is this; that, if Sir James Wallace could ſo far forget himſelf here, your Lordſhips will certainly draw an inference from it, that he might have forgot himſelf on board his own ſhip, where he was under no controul, where he ruled as deſpot, and where the defendant lay at his mercy:—It was a conduct ſo ungentleman-like, I have no epithet to deſcribe it by.

As to the aſſault, having already mentioned to your Lordſhips, that I conſider it as a conſequence reſulting naturally from the libel, I ſhall only further obſerve, that if Sir James Wallace had come here by action, inſtead of coming here by indictment, as it appears to your Lordſhips that the provocation was ſuch, that an officer, honoured with his Majeſty's commiſſion, could not ſubmit to and live; that your Lordſhips would direct the Jury to take that matter into their conſideration; and to give damages in proportion as the provocation given might appear to juſtify the blow.

Great weight will be laid, no doubt, by the gentlemen on the other ſide, upon Sir James Wallace's ſituation.—He will be repreſented to your Lordſhips as a man of courage, and a man of honour: but has any imputation been brought againſt the honour or courage of the defendant? It may be ſaid of honour, my Lords, as of wit, it is the property of thoſe who have it, and too often their only property: it is the only property of the defendant, a poor Lieutenant with only his pay to ſubſiſt on: he won his title to it by his ſword, and by his ſword he has ſupported the poſſeſſion. I do not allude, my Lords, ſolely to his particular conduct reſpecting Sir James Wallace, but to his general conduct ſtated in the affidavits of thoſe Gentlemen who ſerved with him, and whom he ſerved under—both naval officers and marines.

From the arguments which have been laid before your Lordſhips by the learned gentlemen who preceded me, and from that humanity which reſides in your Lordſhips' breaſt; I have no doubt, but, though the defendant has ſuffered judgment to go againſt him by default for the libel; and though upon the verdict upon the aſſault he has been convicted, yet your Lordſhips will think, that though he has acted in his civil capacity improperly as a man, yet you will think, that as a ſoldier, he has acted right: and taking into conſideration the great provocation he received—remembering that he was not the original tranſgreſſor in the caſe of the libel—and recollecting that the aſſault was the effect of that libel, in pronouncing judgment, you will ſoften the rigour of juſtice by the benign interpoſition of mercy.

Mr. BEARCROFT.

My Lords,

I AM of counſel for Sir James Wallace, the proſecutor, who calls up Mr. Bourne to judgment upon both theſe indictments; and I am extremely happy, for Sir James Wallace's ſake, to have obſerved the patience (and in uſing that word, I mean ſomething more than the mere idea of time ſpent) that the Court has ſhewn, in hearing every thing that has been ſaid, and every thing that

that has been ſworn for the defendant. I ſay, I rejoice in this, for the ſake of Sir James Wallace; becauſe I therefore inſure him, that he will meet with the ſame treatment from the Court, on his part; and if he does, I will venture to pronounce, that it is my clear, though poor judgment, that Sir James Wallace will be found, from the beginning to the end of this unfortunate conteſt, perfectly correct, in the judgment of men of all deſcriptions, except in a ſingle inſtance; (I mean, that he was prevailed upon, in a moment of irritation, ſomewhat to demean himſelf;) for, in my judgment, every man does ſo who deſcends to plead before the juriſdiction of a news-paper. I know, that when your Lordſhips come to pronounce judgment upon the libel, that fault of the proſecutor of the libel will ſtand the defendant, who is convicted of it, in much ſtead: but I deny that it will have any conſequence, or bear in the leaſt degree, by way of extenuation, as to the aſſault that was committed, for which I truſt the Court will give a very ſerious judgment. I am ſorry, and I am perſuaded Sir James Wallace is aſhamed, that he did put that letter, of the 20th of December, in a news-paper. It was anſwered, however, before that ſame juriſdiction, by the defendant; it was anſwered in the groſſeſt terms that could poſſibly be uſed: and if Sir James Wallace's letter had uſed the expreſſions which are only to be found in the mouths of the advocates for Mr. Bourne, and not upon the face of that letter, Mr. Bourne was more than even with him, by the anſwer he put in to that letter; for Mr. Bourne calls him, in one part of it, a daſtardly coward, and a ſcoundrel: I ſpeak from the paper itſelf. With reſpect to that, therefore, they were at leaſt even; both, I admit, very much in the wrong.

All I have to aſk for Sir James Wallace, is, that his conduct may be decided upon by your Lordſhips, and thoſe who chooſe to form an opinion upon it, not by the judgment of a ſelf-erected Court of military officers, of whatever rank, number, or reſpectability; for their judgments cannot weigh a feather in any man's mind, if it be recollected that it wants the firſt principle eſſential to juſtice; namely, that before judgment they will be ſo good as *to hear both ſides*. Your Lordſhips aſſuredly will do that; you have heard but one yet; and I am ſerious and confident when I aver to your Lordſhips, that every circumſtance, every word that is introduced by the affidavits, on the part of the defendant, ſworn by him, and confirmed, as ſome of them are, by other witneſſes, in affidavits, every thing that can bear the leaſt colour of extenuation of the offence, is as expreſsly contradicted by Sir James Wallace, ſupported by more in number, and of equal character: it will not be diſputed. I ſay, it is a melancholy circumſtance, that this unfortunate buſineſs, which has created ſo much uneaſineſs, is to end in a conflict of affidavits, upon facts, between a great number of perſons of undoubted general character and honour: but ſuch is the caſe.

It is contended, that there is an extenuation of the conduct of Mr. Bourne, upon this occaſion, to ſtate it accurately, upon theſe grounds:—That being under the command of Sir James Wallace, Sir James abuſed his ſituation, for the purpoſe of frequently inſulting and oppoſing the defendant, in an ungentleman-like manner. That is ſtated as the provocation which led to every thing elſe. It was obſerved by the learned gentleman who ſpoke ſecond, that he claimed a merit for his client, in ſuppreſſing that natural indignation which he muſt feel at inſulting and oppreſſive tyranny in Sir James Wallace. The Court will ſee, when the affidavits come to be read, whether he is entitled to any ſuch encomiums.

My Lords, You could not but obſerve, that the counſel for the defendant, though they were warm, and very much at large, in point of declamation, yet, that they forebore to enter minutely into theſe long affidavits; they touched, however, upon ſome parts of them. It is my indiſpenſible duty to be a little more particular, and to ſtate to your Lordſhips ſuch a body of contradiction to every material part of them, that at leaſt I have a right to aſk this of the Court, not to believe them, and not to take the facts inſiſted on for granted; for it is enough for me, and I would not wiſh to decide, where I ſee poſitive contradictions, between gentlemen, neither of whoſe characters I am acquainted with: But I have a right to ſay to the Court, and I beg it may be remembered, when the judgment comes to be pronounced, that there is ſuch a contradiction to every material fact laid before the Court, by the affidavits of the defendant, that the Court at leaſt muſt be in doubt; and that they cannot form their judgment, taking theſe to be facts, which are ſworn by the affidavits on the part of the

the defendant. My Lords, I will ſay more: I will ſay, that when Mr. Bourne's affidavit comes to be attended to, and the contradictions, ſuch as they are, traced and obſerved, it will be ſeen, that Sir James Wallace, ſo far from being blameable, oppreſſive, tyrannous, and inſulting, has behaved, in more than one inſtance, with a kindneſs to Mr. Bourne, that deſerved a far different return.

The complexion of the defence may be ſeen in the firſt ſentence of the defendant's affidavit. Mr. Bourne ſets out with introducing a fact that has no relation to this queſtion, for the purpoſe of giving a bad impreſſion of Sir James Wallace's conduct, at the firſt inſtant that he came to the knowledge of Mr. Bourne. The Court will look at the affidavits, and ſee whether they believe that Mr. Bourne had ſuch an averſion to the character of Sir James Wallace, that when he came to Portſmouth to go on board the ſhip, he ſolicited, and endeavoured by all poſſible means to prevail upon other gentlemen of the Corps to go in his ſtead; but that he could get no man, however diſpoſed to ſerve a man of Mr. Bourne's character, to exchange for ſo bad a birth. That is the firſt idea he chooſes to impreſs upon the Court.

In Auguſt, 1781, ſays Mr. Bourne, was the firſt time I became acquainted with Sir James Wallace; it happened in this way: A friend of mine, Mr. Murphy, came into my room, when I was confined with wounds got in the public ſervice, in high quarrel with Sir James Wallace: there had been blows; I interfered, and put an end to it. Mr. Sleigh, a friend of Sir James Wallace's, was afraid it would ſtill go farther, and the next morning again applied to me; and I (Mr. Bourne) uſed a great deal of pains, and did at laſt ſucceed to prevent any farther conſequences between Sir James Wallace and Mr. Murphy.

Now, the Court will attend to the fact, as it is proved beyond doubt; for there is no competition in the evidence, in the anſwer that is given to this. It happened Sir James Wallace was going down ſome ſtairs, to the water-ſide, when he endeavoured to paſs this Mr. Murphy, a lady, two children, and a little dog. It ſeems Sir James, with a ſtick that he had, touched the dog, to make way for himſelf to go by: Mr. Murphy flew in a violent rage, and ſtruck Sir James Wallace upon the face; he inſtantly returned it. There was a ſcuffle between them. With great difficulty they were parted; and in the heat of this buſineſs they returned to the room where Mr. Bourne was. This was the firſt introduction of Sir James Wallace. Preſently it was aſked who the perſons were. The inſtant the name of Sir James Wallace was announced, Mr. Murphy, in the preſence of Mr. Bourne, begged his pardon; uſed the ſtrongeſt expreſſions of contrition; was exceſſively ſorry for the accident; and made a moſt ample apology, as indeed was requiſite, for what had paſſed: and yet it is repreſented as if this matter was not concluded at the moment; but that it was put an end to by the interference of Mr. Bourne, the next morning. There cannot be a doubt of it, when our affidavit is read; for I will ſtate to the Court a letter from that Mr. Murphy himſelf, in which, after expreſſions of great reſpect to Sir James Wallace, and great ſorrow for what had happened, he treats it as a circumſtance of advantage to himſelf, that they had got acquainted; and Mr. Murphy immediately proceeds to avail himſelf of it. He expreſſes his general reſpect for Sir James Wallace; and begs the favour of him to provide for a young man of ſixteen years of age, then in the ſea ſervice. This letter, therefore, ſhews a manifeſt miſrepreſentation of this part of the ſtory; for it ſhews there was an end of that buſineſs upon the ſpot; and there was, in truth, not the leaſt danger of that quarrel being renewed.—I complain of the affidavit ſetting out with this, if it was true—as it is falſe, I complain of it ſtill more.

It is ſaid that Mr. Bourne was ſo averſe to ſail under the command of Sir James Wallace, that he attempted an exchange. I have an affidavit to read, of Mr. Spry, who was, I believe, the firſt Lieutenant, a man of excellent character in the navy, who ſwears, ſo far from that being the caſe, that frequently in converſation with Mr. Bourne, after he was on board the ſhip, in the early part of the voyage, Mr. Bourne repeatedly expreſſed his happineſs that he ſailed with Sir James Wallace, and bore ample teſtimony to his general character, which is utterly inconſiſtent with the idea that Mr. Bourne's mind was at that time impreſſed, as he would ſuggeſt by his affidavit, with a bad opinion of Sir James Wallace, by the affair at Whitehall, and other circumſtances.

I come then to a circumſtance, which, as it occurs firſt in point of time, but appears only upon our affidavits, is nevertheleſs fit to be ſtated. Mr. Bourne com-

plains of Sir James Wallace's treatment. ——What is the firſt intercourſe that they had? As ſoon as Mr. Bourne gets down to Portſmouth, he aſks Sir James Wallace leave to go to London for three days. Sir James told him, "Sir, I cannot give leave; it is improper: but if you will only go for three days, I will do what I can; I will not take notice of it."——Sure this was handſome treatment. Mr. Bourne abſented himſelf fifteen days, and Sir James Wallace did not take notice of it. Who conferred an obligation? Who behaved handſomely and kindly in the firſt intercourſe between theſe parties?

They got to Madeira. General orders were given, that no officer ſhould lie on ſhore. The reaſon was given, that the enemies cruiſers were about, and it was neceſſary for the officers to lie on board. Sir James Wallace, and ſeveral of the officers, and his company, dined on ſhore at Madeira, with the Britiſh Conſul. Mr. Bourne was introduced, by Sir James Wallace, to the Conſul. As they were riſing from dinner, Mr. Bourne aſked leave of Sir James Wallace, againſt the general orders, to ſtay on ſhore that night. Sir James was unwilling to grant it, and unwilling to make uſe of his general power to refuſe him before ſtrangers—he gave him leave. The ſecond requeſt he made was not refuſed. What is the conſequence? Mr. Bourne, and one of the gentlemen, who makes the affidavit, Mr. Markett, get intoxicated on ſhore: they go to the theatre; they behave there in ſuch a manner, that they are turned out of the houſe, inſulted, beat, and abuſed. (I am ſtating the affidavits.)——He did not return the next day; he ſtaid another night. In the morning, when Mr. Bourne and Mr. Markett had returned, ſo treated by the inhabitants, an ironical note, in the name of both Bourne and Markett, was ſent to their commanding officer, Sir James Wallace, in ſome ſuch terms as theſe:—"Mr. Bourne and Mr. Markett preſent their compliments to Sir James Wallace, and return him their particular thanks for the favour that he did them, in introducing them to the Governor of Madeira; to which circumſtance they attribute the polite treatment they received on ſhore."—This was an inſult, if you talk of inſult; it was the firſt that was given on either ſide. Sir James Wallace ſent for Mr. Bourne and Mr. Markett; and he aſked them what they meant by it: and I believe he told Mr. Bourne, particularly upon that occaſion, that he behaved very ill, and ſaid, that if ſuch was their conduct, he could have no farther acquaintance with Mr. Bourne; and in his affidavit he puts an expreſs negative againſt having uſed any other expreſſions, warmer or ſtronger than theſe.

What is the next fact ſtated in the affidavits? In the evening, while Sir James was ſitting in his cabin, he hears a noiſe in the ward-room, the place where the officers uſually ſit: he enquires into it; it turns out to be occaſioned by Mr. Bourne. An officer, Lieutenant Stephenſon, was in bed, whoſe buſineſs it was to turn out, according to the ſea-phraſe, in an hour or two, to take his watch in turn: he begged of Mr. Bourne, who was making a violent noiſe, to deſiſt, for he could not ſleep. Mr. Bourne did not attend to it. Somebody blowed out the candles, in order to put an end to this. Mr. Bourne was extremely angry. In conſequence of this, Mr. Bourne ſent up a meſſage to Sir James Wallace, in which he choſe to take it for granted, that Sir James Wallace had directed the man to blow out the candles.—This was fractious and peeviſh, to be ſure, if the fact was ſo. Sir James Wallace ſent for him; and here Mr. Bourne repreſents, in his affidavit, as if Sir James Wallace had talked to him about fighting; and had ſaid, If I have uſed you ill, why don't you call me out?—That is totally denied by Sir James Wallace, and ſeveral perſons preſent at the time; and, as Sir James ſwears, the harſheſt expreſſion he uſed to him, was, "Go along, Sir; you are a very troubleſome man."

I come now to that part which the gentlemen chooſe to dwell upon; and that is, the excluſion of Mr. Bourne from the quarter-deck, and the chimerical inſult which Sir James Wallace is ſuppoſed without any provocation to have thrown upon Mr. Bourne on that occaſion. The affidavits repreſent, that Sir James came from his cabin, with the manner of an inſane man, with his eyes flaſhing fire, clenching his fiſt in the face of Mr. Bourne; and that he then ſaid to his next officer, Lieutenant Spry, "Mind, Sir, my orders are, that Mr. Bourne does not walk on the ſame ſide of the quarter-deck with me." And this, my learned friend, Mr. Erſkine, ſees, by a caſt of the eye, which he threw

upon

upon our paper, (and which, by the bye, he had no right to caſt his eye upon :) Be that as it may, it certainly was but a caſt of the eye, or he would have ſeen them more correctly; that this is ſtated, as if it was a right and privilege of the Captain. Now, Sir James Wallace, in his affidavit, puts a poſitive negative about his coming out in a rage; he is confirmed in that denial by perſons preſent; and the orders, that Mr. Bourne ſhould not walk on the ſame ſide, are thus accounted for: It is ſworn both by Sir James Wallace, and others, that when the Captain came, he, as the Captain, has a privilege to walk upon the quarter-deck. I claim no other privilege than that in this buſineſs. Mr. Bourne came from the place where he was walking, and paſſed and repaſſed Sir James Wallace, with a hectoring geſture; ſhouldering him, as it were, and inſulting him by his manner. That is ſworn, and deſcribed particularly, by ſeveral affidavits.—That thus provoked, Sir James Wallace ſaid to Mr. Spry, Underſtand, Sir, it is my orders, that Mr. Bourne does not walk on the ſame ſide the deck with me. Is that unjuſtifiable? Was it not perfectly juſtified? Mr. Bourne comes out of his place, walks up to him in an inſulting manner: Sir James Wallace requires, that for the future he ſhould not do ſo; he had a right to require it; he would have been perfectly juſtified in ordering—to borrow a phraſe of my learned friend—that he ſhould walk upon no ſide of the deck; or, that he ſhould not come upon it at all. Upon that fact he would be juſtified in doing it. So that part of the caſe ſtands.

I don't recollect, that in the courſe of the affidavits there are any other charges fit to be attended to, particularly in this Court; except, that it is ſaid, that on coming up for judgment for an aſſault, for judgment upon a libel, which is a crime, as it tends to provoke aſſaults and challenges, the defendant has been adviſed to ſtate to the Court, that upon many occaſions at Jamaica, he provoked the plaintiff to fight, and challenged him, and that he would not fight him.

I find myſelf under great difficulty how to conduct myſelf as to that part. I am afraid that my client, Sir James Wallace, has been led to follow a bad example; and that he has gone into that point, which, however fit it may be for a Court of the Marſhals of France, is not fit for your Lordſhips, the four Judges of the Court of King's Bench. But an apology may be made for every thing that Mr. Bourne has done, of whatever kind, however curious and outrageous.—I truſt Sir James Wallace's apology will be allowed for his feelings, when he ſhews, upon the face of this affidavit, that he has at all times done, and been ready to do, every thing that became a man of honour, and of the ſtricteſt punctilio; though I confeſs that I am afraid to point to particular parts of the affidavit. Your Lordſhip, I obſerve, ſaid, when the affidavit relative to a noble Earl was read, that you were not to be governed by my Lord Cork's opinion—the Court does not want it—but I have an affidavit of my Lord Cork, who tells the ſtory perfectly different. I ought not to ſay any more about it; your Lordſhips will perhaps do it the honour to attend to it, when it comes to be read. That Sir James Wallace will never commit himſelf in private and ſingly with Mr. Bourne, he is perfectly juſtified in: and I beg leave to contend, that every man who contemplates the deſign of perſonal combat, or any thing of that kind, ſhould not ſtir a ſtep, or ſay a word about it, but in the preſence of a third perſon: that has been the conduct of Sir James Wallace, from the beginning to the end: on that conduct, I am perſuaded, that if three hundred General Officers and Colonels, or of whatever rank they may be in the army, if they had had that caſe before them, they would have given a very different judgment from what they have done.

It is ſuggeſted, that Sir James Wallace has behaved exceſſively ill; for that at Bath he pulled out his piſtol, and preſented it at Mr. Bourne—it has been ſuggeſted that Mr. Bourne ſent a ſort of challenge to him, and that Sir James made a paltry evaſion about ladies being there.—I beg of your Lordſhips, and of every body that has the curioſity to attend to this buſineſs, to mark the affidavits upon that part. Mr. Bourne ſent a meſſage without a name, that a gentleman at the White Hart Inn wants to ſpeak with Sir James Wallace. Sir James returns for anſwer, that he deſires to know his name; he would come to no perſon who would not ſend his name. Again, in reply, it is ſaid, it is Mr. Bourne. Sir James's anſwer is, I have no buſineſs with Mr. Bourne. And Sir James Wallace confeſſes, I believe, in this part of his affidavit, that he ſaid, "If Mr. Bourne has any thing to ſay to Sir James Wallace, let him

him ſend a gentleman, and propoſe his terms, and he ſhall be anſwered."

As to the affair of the piſtol in the ſtreet, it is in proof from the affidavits, that Mr. Bourne threatened to cane Sir James Wallace wherever he met him, and to do him a miſchief. Sir James ſwears, that, apprehending ſome inſult of that kind, or ſome diſhonourable treatment might be attempted, he put piſtols in his pocket for his own defence, and to repel any ſuch attempt. The fact proves the intent; for as he was coming down the ſtreet, Mr. Bourne went up to him, flouriſhed his cane about him, and was going to ſtrike him. Sir James very coolly takes out one of theſe piſtols, places it upon his ſleeve, and Mr. Bourne has done. Is there any thing improper? No bad, unjuſtifiable, illegal uſe was made of theſe piſtols.

After this the parties come to London: there is this publication in the news-paper; and it is inſiſted, by the affidavits on the part of Mr. Bourne, that he knew nothing of that former publication—he has ſworn it.—I have no right to ſay that it is not true, becauſe I have no affidavit that ſays ſo, and the nature of the thing does not admit it: but whether he knew of it or no, he was the cauſe of it, beyond all doubt; for it is in proof by the affidavits, that Mr. Bourne made it his conſtant, his daily, his hourly practice, to go about in all companies, to repreſent to every man, friend or ſtranger, that Sir James Wallace was a daſtardly coward—that he had provoked him—had challenged him at Bath, but he would not meet him—that he had beat him there, and would beat him wherever he met him. It was extremely natural, therefore, that Sir James Wallace ſhould ſuppoſe that Mr. Bourne was the author of it.

The aſſault I rely upon: the libel is anſwered by the libel in the news-papers, and there is no colour to ſay that there is the leaſt extenuation of the aſſault. My learned friends have argued, that, in point of honour, Mr. Bourne could do no leſs.—I have no difficulty to ſay, that my humble opinion, in point of honour, is, that he ought not to have done near ſo much. If it were neceſſary, to uſe a ſchool-boy's phraſe, to give the coward's blow, was it neceſſary to ſtrike Sir James Wallace in the manner he did, attended with ſuch effects as the blows were, which ſhews the manner in which they were given? It was impoſſible theſe blows could have been given merely for the purpoſe of preſerving Mr. Bourne's honour; the manner and the effect of them ſhew that they were given with malevolence.

I ſcarce condeſcend, under ſuch circumſtances as theſe, to make an apology for the firſt count; and yet, if it were a fault, it is not attributable to Sir James Wallace. When aſſaults are attended with ſuch circumſtances as theſe, the common Clerk of Indictments, that has inſtructions to draw them, of courſe puts in ſuch a count. Whether right or wrong, I don't mean to ſay; perhaps often wrong: but it is not attributable to Sir James Wallace; for I appeal to the recollection of the learned Judge, the moment the cauſe came to be tried, if I did not ſay that I was ſorry there was ſuch a count; that, in my own judgment, I thought the evidence would not warrant finding him guilty; and that I had not, as in truth I had not, the leaſt difficulty to perſuade Sir James Wallace that it was improper to go upon it. I truſt therefore every imputation upon the ſcore of that count is totally waſhed away.

It remains then, whether, upon the whole, there is any mitigation of the aſſault. Here is a diſpute between an inferior officer and the perſon under whoſe command he is.—Says Mr. Bourne, "I have been inſulted, I have been oppreſſed: as a man of honour I behaved; if I had not behaved ſo, I muſt have given up my commiſſion, and dragged out a miſerable exiſtence during my life."—That is the way in which it is put, and I have no objection that the cauſe ſhould be tried upon that criterion; for I aſſert, that upon the affidavits it will appear that there was no colour to charge Sir James Wallace with inſult or oppreſſion: the only fault he has been guilty of was, in not calling Mr. Bourne to a Court-Martial upon the ſpot. The gentleman has obſerved upon Mr. Bourne's application to Sir George Rodney for a Court-Martial upon Sir James Wallace. I will be judged by Sir George Rodney, who was right there: he acted like a man of ſenſe and diſcretion; he ſaw that there was no colour for a Court-Martial, at the ſuit of Mr. Bourne, upon Sir James Wallace: he would not grant it therefore; but he ſaw that they were not fit companions on board the ſame ſhip; and therefore he very kindly to Sir James Wallace, and to Mr. Bourne too, if you pleaſe to ſay ſo, withdrew Mr. Bourne from that ſhip. Certainly, therefore, upon that no conſequences can be drawn one way or the other.

other. Then here is an aſſault, a cruel and outrageous one. This Court does indulge certain paſſions in mitigation; and certain provocations, even in words, would mitigate the offence, and reduce it to a ſmall one. Why? Becauſe the Court indulges the influence of ſudden paſſions incident to human nature. Was that the caſe here? It was a determination long before to beat Sir James Wallace wherever he met him. This inferior officer, diſpleaſed without a cauſe, aſſaults him in the manner that appears by the report which has been made by the learned Judge: it is a moſt aggravated caſe. I ſubmit to the Court, it will not, when the facts come to be underſtood, upon comparing the affidavits on both ſides, receive the leaſt extenuation: I am perſuaded that the Court will feel, for the ſake of diſcipline in the navy, for the ſake of every thing that is decent and proper, that they will paſs a very ſevere ſentence for the aſſault: if they do not ſo for the libel, it will be a ſort of puniſhment on Sir James Wallace, which I, as his advocate, muſt confeſs he in ſome degree deſerves, ſince he condeſcended to enter the liſts with his antagoniſt before a news-paper tribunal.

[*The Affidavits on the part of Sir James Wallace, read.*]

Mr. SILVESTER.

My Lords,

MR. BOURNE is brought up to receive the judgment of the Court, for as groſs a libel as ever was made upon an officer: groſſer language could not have been made uſe of; nor could a higher character have been attacked than that of Sir James Wallace. Much has been ſaid, by the gentlemen on the other ſide, of the nice feelings of men of honour; that when they have received inſults, they will ſeek for ſatisfaction. I agree with them in every reſpect in the propoſition, but differ from them in its application: thoſe nice feelings of honour, and that honourable conduct, do not apply to the preſent defendant. I am ſure that neither of theſe gentlemen, men of honour as they are, would ever have condeſcended to miſrepreſent any fact whatever; much leſs would they have done, as Mr. Bourne has this day, put that upon affidavits which has been contradicted by ſome of the moſt reſpectable witneſſes that could have been produced. In ſhort, take it from the firſt æra, from the ſetting-out of Mr. Bourne, to the laſt period, there is not a ſingle circumſtance, either in point of fact, or in point of date, but what is contradicted; not contradicted looſely, but pointedly, abſolutely, without evaſion: every fact, from beginning to end, is abſolutely contradicted by witneſſes; not by Sir James Wallace alone, but by five, ſix, or ſeven witneſſes.

Mr. Bourne firſt begins with the tranſaction between Sir James Wallace and Mr. Murphy, by way of inducing the Court to believe, that, even before the entering on board the ſhip, a quarrel had ſubſiſted; and he ſtates, in this quarrel between Mr. Murphy and Sir James Wallace, in which Mr. Sleigh and Sir James Wallace came into his room, "that he interfered, in order to make up that quarrel; that Sir James Wallace laid hold of him by the breaſt, ſhook him, and aſked him if he meant to take the quarrel upon himſelf." That fact is abſolutely contradicted, by not only Sir James Wallace, but Mr. Sleigh, who ſays, ſo far from Sir James Wallace laying hold of Mr. Bourne by the breaſt, he did not touch him, did not come near him. "But," ſays Mr. Bourne, "the next day Mr. Sleigh came, and was apprehenſive of the conſequence of it." Mr. Sleigh has poſitively denied that fact: he was never apprehenſive of any conſequence, he had no reaſon to be ſo; for what was the conduct of Mr. Murphy and Mr. Bourne?—The moment they knew Sir James Wallace, they knew his character; they ſhrunk back, they were aſhamed of their conduct.

The next thing Mr. Bourne aſſerts is, "that he was always deſirous of quitting the ſhip, and exchanging with a brother officer." What does Mr. Spry ſay to that? So much the reverſe, that he, Mr. Bourne, thought it the happieſt thing that could have been, getting on board that ſhip: that he was afraid of incurring the diſpleaſure of Sir James Wallace, for ſtaying ſo long in London; and thought it the moſt fortunate circumſtance in his life, his ſailing with ſo great an officer. Mr. Spry ſays, many young men would have been glad to have gone out with him, Sir James Wallace, expecting the opportunity of getting many prizes.

The next fact is, that Mr. Bourne "had frequently been inſulted by Sir James Wallace, in the way to Jamaica, by his coming up with his fiſt clenched, in the moſt provoking manner, and driving him from ſide to ſide of the ſhip."—This fact muſt have been notorious; every officer muſt have known it.

And what do they ſay? Not one of them had heard of it. If it had paſſed, they muſt have known it; and every one of them contradicted him abſolutely in that fact.

The next fact Mr. Bourne chuſes to ſtate is, "that before the ſhip arrived at Jamaica, one of the Lieutenants, Mr. Stephenſon, came, ſeemingly intoxicated with liquor, from Sir James Wallace's cabin; that he behaved with great rudeneſs and inſolence to him, Mr. Bourne, and afterwards put out the candles; that he then ſent a meſſage to Sir James Wallace, to know if it was done by his order; that Mr. Spry came down to him, and enquired into the matter; that he told him there had been ſome diſpute upon the ſubject, and he thought Sir James Wallace had ſent Mr. Stephenſon to put out the candles. Sir James, he ſays, ſent for him. When he went into the cabin, he deſired him to get away; he would ſay nothing to him at that time, but would take another opportunity; and that he, Mr. Bourne, ſhould hear from him, Sir James Wallace."—Now, is it likely that the Commander of the ſhip ſhould ſend for the Lieutenant of Marines, and, when he came into his cabin, ſhould tell him, "I will ſay nothing to you, but I will take another opportunity; you ſhall hear from me?" What! from the Commanding Officer? Is that probable? "But," ſays Mr. Bourne, "at that time were preſent the Maſter of the ſhip, and the Surgeon." Neither of theſe facts is true, not one of them. It was between eleven and twelve at night, and Lieutenant Stephenſon was obliged to go upon the middle watch at twelve; he wiſhed to get ſome ſleep. When Mr. Spry came, and enquired what was the matter, Lieutenant Stephenſon told him, that Mr. Bourne would not be quiet, and let him ſleep, though frequently deſired; upon which, ſays he, I put out the candles. Mr. Spry ſays, after that, Mr. Bourne being ſent for by the Captain, there was nobody preſent but Major Varlo and himſelf; and the Captain only told Mr. Bourne he was a very troubleſome man; that was all. And as to the fact of the Maſter being there, he had loſt his leg but twelve days before, and was confined to his bed; and the Surgeon was not there, for he was ill, and confined to his cabin. And as to Sir James Wallace having ſent this meſſage, that could not be true; for Mr. Stephenſon wanted to get up to the middle watch, and therefore could not ſpend the evening with the Captain. And as to the inſinuation of Mr. Stephenſon being intoxicated with liquor, the officers ſwear Mr. Stephenſon was as ſober a man as ever came on board a ſhip, and they never ſaw him once intoxicated; and Mr. Faris, who ſupped with him that night in the ward-room, ſays he went to bed perfectly ſober.—What credit can your Lordſhips give to any one of theſe facts, every one of which is proved to be falſe, every fact ſworn to, and the perſons ſtated to be preſent are all abſolutely diſproved?

Then the next fact is, "that Sir James Wallace came running out of his cabin in a violent manner, with his fiſt clenched, his eyes flaſhing fire. But," ſays Mr. Bourne, "really thinking Sir James Wallace, at that inſtant, in a ſtate of madneſs, I turned away, and went to the other ſide of the deck. Sir James Wallace then walked ſeveral times backwards and forwards, in a moſt violent rage, and then went into his cabin; and ſhortly returning, called loudly for Lieutenant Spry to attend to his public orders, which were, 'That they who ever treated him with diſreſpect, ſhould never walk on the ſame ſide of the quarter-deck with him; therefore, Mr. Bourne, you muſt ever walk on the oppoſite ſide,' or words to that effect."—Now this is contradicted, not only by Mr. Spry, who received the orders from Sir James Wallace, but by Major Varlo, who does not poſitively ſay he was preſent; but when he was ſent for down by Mr. Bourne himſelf, and Mr. Bourne complained of thoſe orders to him, that he had been ill treated, by being ordered from the quarter-deck, he does not venture to ſay one ſingle word of any other affront or ill uſage: and Major Varlo, the Major of Marines then on board the ſhip, ſaid, he not only never heard from any perſon of any ill uſage; but that he, Mr. Bourne himſelf, never once complained to him: "if he had, ſays he, I ſhould have thought it my duty to have taken him under my protection, as his Commanding Officer." What then can your Lordſhips think, when he is complaining of the ill uſage of being turned off the quarter-deck, never to mention the aggravated circumſtance of his being menaced by Sir James Wallace, thruſting his fiſt in his face, &c.?

He, Mr. Bourne, afterwards ſays, "the ill uſage he received after this continued two or three weeks."———My Lords, in leſs than ſix days they arrive at Jamaica. ———This happened upon the 25th, and upon

upon the 30th of April they arrive at Jamaica. But when they come on ſhore, Mr. Bourne ſtates, in his affidavit, "that when he arrived at Jamaica, he accidentally met Sir James Wallace at Port-Royal, in company with Major Varlo, of the Marines: he then gave Sir James Wallace an opportunity of explaining himſelf, which he declined, and, walking quietly away from him, went to his boat." Sir James Wallace ſays, in the duſk of the evening, he met Mr. Bourne in a ſtreet in Port-Royal; that he came up to him, and ſaid, "Sir, I have ſomething to ſay to you in private:" upon which Sir James Wallace ſaid, "If you have any thing to ſay, ſay it before Major Varlo; I will have no private converſation with you." Major Varlo ſays, this was the whole that paſſed; nothing was ſaid by Mr. Bourne, but "I want to have ſome private converſation with you;" nor by Sir James, but "I will have no private converſation with you; if you have any thing to ſay, ſpeak out like a man, in the preſence of Major Varlo." And this is, as he calls it, a challenge.

The next fact is, as to what paſſed before Captain Fiſher. Mr. Bourne is not confirmed in what he ſays, becauſe Captain Green was at ſuch a diſtance he could not well hear; and therefore only ſpeaks to a tranſaction that paſſed at ſome diſtance. But Sir James Wallace ſays, that when Mr. Bourne came up to him, he came out of a negro hut, and aſked him, "if he had any thing to ſay to him?" To which Sir James Wallace anſwered, "he had not." "Then," ſaid Mr. Bourne, "I have ſomething to ſay to you in private." "No," ſays Sir James Wallace, "I will have none with you." And, my Lord, I truſt, no man will, after this, have any private converſation with Mr. Bourne; a man who can thus miſrepreſent facts, that people, who were preſent at the time, give a flat contradiction to. Mr. Bourne ſays, "that Sir James ſaid, he ſhould hear from him; and though he continued there ſome time, he never heard from Sir James Wallace." Why? Two days after, Sir James Wallace ſailed from thence; he was under ſailing-orders: and he, Mr. Bourne, ſays, "he heard from people about, that Sir James Wallace had been aſperſing his character."

So far takes us from England to the voyage to Jamaica; and now they part till the interview at Bath.——What paſſed there? Mr. Bourne comes to an obſcure inn; ſends for a waiter, deſires a private room up one pair of ſtairs; then ſends the waiter, not with his name, not with a written note; but there is a gentleman wants to ſpeak to Sir James Wallace. Sir James Wallace aſks his name; the waiter could not inform him. A ſecond meſſage is ſent: when the ſecond meſſage came, he ſaid, he would not go to any man who would not ſend his name. And who is Sir James ſitting with? Not with ladies, as mentioned by Mr. Bourne, but Lady Wallace. The waiter returns a third time, and ſays the gentleman's name is Bourne: then Sir James ſays, he will not go. What is Sir James's conduct? He prepares himſelf with his piſtols. The waiter ſays he ſaw a ſword on the table with the piſtol. What was deſigned by Mr. Bourne with this ſword at Bath? a place were no man wears a ſword; and he muſt of courſe have expected Sir James Wallace to have come unarmed with that weapon.

What is Mr. Bourne's conduct after that? He writes an abuſive letter to Sir James Wallace: he then meets him in the ſtreet, not by accident; but he and his friend Captain Webber, who had ſent him the ſword, they meet Mr. Davis. Captain Webber ſays, Come along with me, you will ſee Sir James Wallace caned. "Sir James Wallace beat!" ſays Mr. Davis, "if I know any thing of Sir James Wallace, all the world know his character too well to think he will ſubmit to a beating."—They go down the ſtreet; Mr. Bourne croſſes the ſtreet to meet Sir James Wallace; Mr. Davis kept his eye, all the time, upon Sir James Wallace and Mr. Bourne. What paſſed between them? Something paſſed, but what he could not hear. Sir James Wallace drew out a piſtol, and reſted it upon his arm. Mr. Bourne never attempted to ſtrike Sir James Wallace, becauſe he knew, if he had, it would have been followed with inſtant death; and Mr. Bourne ſays afterwards, "I did not ſtrike him; for if I had, he would have ſhot me." And yet this ſame Mr. Bourne, after this declaration, comes to London; and indeed buzzes it about at Bath, that he has caned Sir James Wallace, that he has treated him with ignominy and with contempt; and, as my learned friend ſays, among men of honour, a blow is never to be wiped off. What then? He meets Mr. Abbot next day; there he ſtates, that he means

means to publiſh the letter he had ſent Sir James Wallace, and the whole account of the tranſaction. This was long before Sir James had any thought of publiſhing a word about the matter; this was buzzed about at Bath; was publickly talked of, and told to Mr. Abbot, that there was to be a publication in the paper of every thing that paſſed. Then Sir James Wallace unguardedly puts this in the paper.

When they come to town, what is Mr. Bourne's conduct there? He tells every body of the tranſaction, that he has met Sir James Wallace; that he has treated him as a ſcoundrel; that he has caned him; in ſhort, that he has treated him with every contempt that one man could treat another with, and with impunity: he ſtates, that he has ſent him a challenge by Lord Cork, and Lord Cork has agreed to be his ſecond. How is the fact? Lord Cork abſolutely denies the fact: he ſays, What I did was out of motives of friendſhip: I never meant to inflame this quarrel, or to bring theſe two men to fight: and ſo far from it, Mr. Bourne himſelf knew it to be falſe; and when I ſaw it inſerted in the paper, that he had applied to a nobleman to carry a challenge, and Sir James Wallace refuſed it: ſays Lord Cork, Who do you mean by the nobleman?—You.—Why how can you aſſert that to be the fact? Upon which Mr. Bourne makes an apology to Lord Cork.

Now, if your Lordſhip was to ſum this up to a Jury, and make uſe of all the nice feelings and arguments which have been made uſe of on the other ſide, what could your Lordſhip ſay to a Jury? The weight of the evidence is all on one ſide: it does not reſt alone upon the affidavit of Sir James Wallace; but he is confirmed in every circumſtance where a perſon is preſent, or can be preſent; he is confirmed in every circumſtance in what he ſays. Mr. Bourne ſtands unconfirmed in many circumſtances: in one only, that he is confirmed in, he gets a poor young man, of the name of Markett, to make an affidavit to a fact which he, Mr. Bourne himſelf, does not dare to ſwear to. Mr. Markett, after a very fine panegyric upon Mr. Bourne, drawn perhaps by himſelf, then ſwears to only one fact, which fact is denied by all the witneſſes; the fact of Sir James Wallace ſaying, Why did he not call him out? and he ſhould hear from him.

Then, if you are to ſit in judgement upon this, either as a Court of Honour, or a Court of Law, is Mr. Bourne entitled to any pity or compaſſion? Is his conduct that of a man of nice honour, and nice feelings, who is hurt by any ill uſage, any diſgrace he may receive? I can conceive, when a man is diſgraced by the conduct of another towards him, he is then to be pitied, becauſe, perhaps, it is not in his power to do himſelf juſtice; but in this caſe, I think Mr. Bourne is more diſgraced by the caſe he has made upon affidavits, than by any tranſaction that has paſſed between Sir James Wallace and him; and therefore he is a proper object for exemplary puniſhment.

Mr. LAW.

YOUR Lordſhips will be pleaſed to favour me with a few words on behalf of the proſecution; and I conceive that there never was an inſtance, in which the merciful rules of this Court, which permit a defendant to extenuate his offence at your Lordſhips' bar, have been ſo much abuſed, as upon the preſent occaſion. Inſtead of endeavouring to give to his original conduct, a complexion of leſs malignity than it naturally ſeems to wear; inſtead of repreſenting himſelf as now, at leaſt, awakened from his error, and ſenſible of the outrages he has committed againſt the laws, the defendant does not even condeſcend to conſider himſelf as guilty of any offence deſerving the ſerious animadverſion of this Court; but with unparallelled confidence, comes forward, and avows a purpoſe of very dangerous miſchief, adopted, as appears, upon no adequate provocation, ſubdued by no lapſe of time, no participation of common dangers, no forbearance on the part of the proſecutor; but perſiſted in, and purſued with the moſt rancorous and determined perſeverance, down to the very period when that purpoſe was carried into effect; and now in the very moment of puniſhment, not repented of, not palliated, but made the ſubject of boaſt and exultation. The gentlemen, whoſe affidavits he has filed upon this occaſion, are not content with juſtifying the criminal, but have ventured even to applaud and ſanctify the crime itſelf. Upon theſe affidavits I ſhall have occaſion to comment hereafter; and particularly upon that of Captain Webber, which the Court ſeems to have heard with particular ſymptoms of diſapprobation and diſguſt. I think I ſhall be warranted, in deſiring your Lordſhips to forget, for a little while, the laws of chivalry and the wild max-

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ims of romance, with which the Court has been ſo liberally entertained to-day; and to return with me to the good old laws of England, and the wholeſome correction they adminiſter to ſuch high-handed violence as this. Your Lordſhips will be ſo good as to advert to the affidavit of Mr. Webber, a Captain of marines; and I wiſh it were in my power to draw the puniſhment, as well as the attention of the Court, to that quarter; for if any man can ſtand before the Court in an equal, or higher degree of criminality, than the defendant, it is that ſame Mr. Webber: he approves of the defendant's intention throughout; is privy to the ſending the letter at Bath; ſupplies the weapon; and after full notice of all that has been ſince done by him, ſends the defendant, with his fulleſt approbation on his head, to meet the judgment of your Lordſhips.

Court. He is privy to the defendant's going to aſſault Sir James Wallace in the ſtreet.

Mr. Law. He is privy to every thing that is reprehenſible in the tranſaction; and yet he ſays that he ſoon diſcovered that the defendant might be ſafely abandoned to the guidance of his own judgment; and he does not even retract his opinion of this gentleman's conduct, when he is told by him, that he meant to beat Sir James Wallace at noon-day, in the public ſtreets of Bath: but approves his intention in this particular, as entirely conſiſtent with the conduct proper to be obſerved by a gentleman, and an officer.

If the defendant appeared before the Court, as a man groaning under the abuſe of authority, God forbid that I ſhould ſtand here as the advocate for that abuſe! but I conceive he ſtands here as a jealous, peeviſh, angry man, who is to be taught by this Court, amongſt other duties, his duty of ſubordination; of which he ſeems to have learned a very ill leſſon, in whatever ſchools, military or otherwiſe, he has been hitherto educated.—This leſſon he is now to be taught, by the wholeſome and ſober chaſtiſement of this Court.

The hiſtory of his injuries commences with a matter too frivolous for mention, upon ſo ſerious an occaſion: I mean, the fooliſh broil on Whitehall-Stairs. I would only remark, that the man who harbours little offences of this ſort in his breaſt, for ſo long a time, is much more likely to be the aggreſſor in a buſineſs of this ſort, ſuppoſing it was doubtful who was the aggreſſor, than Sir James Wallace, who ſeems to have entirely obliterated from his mind every impreſſion of the tranſaction: for he receives Mr. Bourne on board his ſhip with kindneſs, after giving him leave of abſence for three or four days, which Mr. Bourne abuſed, by ſtaying fifteen; he receives him again without any tokens of diſpleaſure; and in many inſtances afterwards, particularly in his introduction of him, at the iſland of Madeira, to the Britiſh Conſul, treats him rather with diſtinguiſhed favour, than with any marks of averſion and diſlike.

If, in addition to what Sir James Wallace and Mr. Sleigh have ſworn, the idle affair at Whitehall-Stairs required any further explanation, it receives it from Mr. Murphy's letter; wherein he ſtates himſelf willing to be indebted to Sir James Wallace's goodneſs, in the matter he mentions in that letter; and that what had paſſed between them, had in no degree weakened or impaired the eſteem he entertained for the character of Sir James Wallace.

At the iſland of Madeira, Sir James, if he was ſtrict in requiring the officers to be conſtantly on board in the evening, ſeems to be juſtified in his ſtrictneſs, from apprehenſions for the ſafety of his Majeſty's ſhip, intruſted to his command; and by the order and diſcipline of the navy.—But who is to reproach him with that ſtrictneſs? Not the gentleman in whoſe ſingle inſtance he relaxes it: for when Mr. Bourne and Mr. Markett dine together at the Britiſh Conſul's, they take that opportunity of preſſing Sir James Wallace, in a moment of feſtivity, for leave to ſtay on ſhore that night; and obtain it from him, becauſe he was not willing, as he ſays, to mortify them before the company. How do they uſe that indulgence? Shamefully; they draw not only their own name, but the Britiſh name, into diſcredit in the iſland. They are found in broils at the Playhouſe, and other places; they refuſe to pay the common marks of reſpect to the Governor and the inhabitants, who ſat at the ſame ſpectacle with them; they refuſe to take off their hats. They betray ſomething of barbariſm here, not very creditable to us as a nation. This certainly would have warranted, if it did not even call for, ſome degree of reprehenſion from Sir James Wallace; and yet they come on board, after two nights ſtay on ſhore, without reprehenſion, and continue without reſtraint: but they ſeek Sir James Wallace with voluntary inſult; they ſend him a letter, in which they chooſe to thank him

for his polite introduction of them to the Portugueſe Governor, to whom he had not introduced them; and to which they attribute the civilities they received on ſhore. The civilities to which they allude, were, I believe, their being driven to the extremity of the ſhore, by the inhabitants, who purſued them, and whoſe reſentment they had provoked by their indecent and improper behaviour.

When they come on board, Sir James Wallace,—(and I muſt obſerve, that throughout the whole of theſe tranſactions, both when he is puniſhing, and when he is defending himſelf, he chooſes, very properly, to have witneſſes of his conduct; and I wiſh Mr. Bourne had been equally deſirous to have had witneſſes of his: if he had been ſo, and had found for that purpoſe friends more zealous for his true honour and the public peace, than Mr. Webber, the Court might, perhaps, have been ſpared the trouble of now paſſing judgment upon him)—when they return on board the ſhip, Sir James ſends for them. There were preſent, Mr. Spry, Sir James's Firſt Lieutenant, and the commanding officer of Mr. Bourne, Major Varlo: (and when I name that gentleman, I beg to make one obſervation upon his teſtimony: he does not ſeem to be impeached, or ſuſpected, of partiality on either ſide; but ſeems the general mediator and referee applied to on both ſides).—At this interview, they hear Mr. Bourne and Mr. Markett reprehended for this letter. Sir James aſks them, "What did you mean by ſending me this letter?" Upon their ſaying they conceived his non-introduction of them to the Portugueſe Governor occaſioned the inſults they had received while on ſhore; that they thought he had uſed them very ill, in not having introduced them to the Governor of Madeira—ſays Sir James Wallace, "If you think ſo, I can be no longer acquainted with you." This is not a very ſevere cenſure, nor a very unwiſe reſolution on his part, after the unprovoked inſult he had received from them. After this, Mr. Bourne repreſents himſelf as receiving from Sir James Wallace a ſucceſſion, not of injuries, for he will not himſelf venture to call any thing he ſuffered by that name; but of petty affronts, conveyed in angry looks and rude geſtures. Sir James Wallace, he ſays, often came in his way upon deck, with geſtures of menace; holding his fiſt to his face, and the like. Upon this, I would make one obſervation:—Is it not very extraordinary, if this was the general habit of Sir James Wallace's behaviour, that it ſhould never have been obſerved by Major Varlo, nor any other officer on board the ſhip; and ſtill more, that he ſhould never have complained, ſpecifically, of this ſort of inſult, to Major Varlo, who was the immediate perſon for him to have applied to, for protection and redreſs, if he had received ſuch inſults; and that he ſhould have been wholly ſilent on this head, at a time when he was complaining to Major Varlo of Sir James's ill treatment of him in another inſtance; I mean, in reſpect to the orders upon deck, of the 25th of April?

I come now to the affair of the ward-room, which is ſtated to have happened on the 24th of April.—Mr. Bourne chooſes to ſay, that on the evening of that day, Mr. Stephenſon being much intoxicated, and coming, as he conceives, from Sir James Wallace's cabin, and at the inſtance, as he conceives, of Sir James Wallace himſelf, began to be very rude to the company; to treat them with great impropriety; and at laſt ordered the lights to be put out.

Mr. Bourne's ſuſpicions alone apply this inſult to the account of Sir James Wallace; there is nothing in the fact of the caſe, even as related by himſelf, which warrants ſuch application. But how does the fact ſtand upon the teſtimony of all our witneſſes? They all ſay, Mr. Stephenſon was not in, but near the ward-room; not up and drunk, but ſober and in bed, waiting for the middle watch, which he was to go upon: that he deſired Mr. Bourne, who at that time was making a noiſe in the ward-room, to be ſilent, and ſuffer him to ſleep, as he was to get up ſhortly to take the middle watch: that upon Mr. Bourne's not attending to his requeſt, he ordered the lights to be put out. Mr. Bourne ſent up a meſſage to Sir James Wallace, deſiring to know whether the lights had been put out by Sir James's direction? When he comes to the cabin, he finds Sir James Wallace, Major Varlo, and Mr. Spry. It is very unfortunate for Mr. Bourne, that his recollection is ſo very imperfect, as to the perſons preſent at this time: he ſays in his affidavit, that the Maſter and the Surgeon were in the cabin with Sir James Wallace. The Surgeon was ill in bed: the Maſter was alſo certainly not there, having loſt his leg in the action of the 12th of April; and being ſtill, as all our witneſſes ſwear, confined to his bed. The only perſons that were preſent, relate what paſſed,

paſſed, in a way very different from Mr. Bourne's repreſentation of it, and in a way much more probable and ſatisfactory.——— They ſtate Sir James Wallace not to have forgot, what he did not upon any occaſion, the proper deportment and decorum of his ſituation. He ſays, "You ſent up a meſſage to me, to know why I ordered the lights to be put out; I gave no ſuch orders." At laſt, after hearing what he has to ſay, he tells Mr. Bourne he was a troubleſome man, and diſmiſſes him.

Mr. Bourne ſays in his affidavit, that Sir James Wallace told him at parting, that he ſhould ſome time hear from him. The ſort of menace which Mr. Bourne puts in the mouth of Sir James, on this occaſion, is poſitively denied by Sir James, Major Varlo, and Mr. Spry, in terms of denial, as ſtrong as the Engliſh language can furniſh. We have been very fortunately able to ſtrengthen the credit of all the other witneſſes, by Mr. Spry's arrival in the Barfleur, with Lord Hood, laſt Friday; and that he, who from his ſituation on board was better able than any other perſon to confirm, and who does in fact confirm, the teſtimony of Sir James Wallace's witneſſes, and contradict the ſtory ſo often circulated by Mr. Bourne in converſation, and now told by him upon oath, ſhould ſo arrive in this preciſe juncture of time, is providentially favourable to the character of Sir James Wallace.

To conclude this buſineſs of the ward-room, it is ſaid, by Mr. Bourne, "that Mr. Stephenſon, the next morning, made a humiliating apology to all the officers who had been diſturbed the night before." It certainly was not made to the officers who make affidavits on this occaſion, for they deny any knowledge of it. Now, as to this fact, nobody can ſay, with abſolute certainty, that ſuch an apology was not made to ſome officer or other, but Mr. Stephenſon himſelf, who is abſent.

Court. If the facts ſtated in your affidavits are true, the apology is impoſſible.

Mr. *Law.* It is a matter, at leaſt, that, if it had happened, muſt have been of public notoriety in the ſhip.

The next morning Mr. Bourne chuſes to repreſent Sir James Wallace as "coming out upon deck to him, his eyes flaſhing fire, and, in ſhort, with the look and geſtures of a maniac; that he drove him from one ſide of the deck to another, intending, as he conceives, to irritate him to ſuch a degree, that he might be guilty of ſome indiſcretion, which might draw upon him the puniſhment of a Court-Martial." Now, it is ſomewhat material, as to this fact, to know which was upon deck firſt, and in what direction the perſon firſt upon deck was walking before this ſuppoſed inſult took place. There are ſeveral witneſſes, I think, Mr. Farris, and others, who ſpeak to Sir James Wallace's being upon his ſide of the deck before Mr. Bourne came upon deck; that Sir James Wallace was walking on the larboard ſide; that Mr. Bourne was upon the ſtarboard, walking backwards and forwards; that Mr. Bourne croſſed over, as it appeared to them, with a view to inſult Sir James Wallace; that he walked in a ſwaggering, menacing way, ſtaring in Sir James's face, throwing his arms about, and the like, to prevent his paſſing along; that Sir James Wallace, to get out of his way, was obliged to get upon the midſhip grating, which is a little riſing upon the ſide of the deck. Mr. Farris ſays, he was ſo very near Sir James Wallace, that if he had muttered any ſuch word as Mr. Bourne imputes to him, or any thing elſe, he muſt have heard it, and that nothing of the kind paſſed. They declare the inſult was ſought by Mr. Bourne, who came out of his way to affront Sir James; and that all that fell from Sir James was this very temperate rebuke: he called to Lieutenant Spry, and ſaid, "Mr. Spry, my orders are, that Lieutenant Bourne ſhall not walk with me." Now, if this be ſuch an inſult, entailing on the perſon who ſuffers it ſuch infamy as will warrant him, in the language of my friend, Mr. Erſkine, to hunt Sir James Wallace "through all created ſpace," I am ſure my ideas on the ſubject are much too narrow to enable me to comprehend the foreneſs and jealouſy which belong to the character of a man of honour.—Your Lordſhips will recollect the circumſtances which Mr. Silveſter has already ſtated, that Mr. Bourne talks of a three-weeks tyranny that was exerciſed over him. The dates of known facts cannot err: it was but ſix days at the moſt; for that was the time that elapſed between the 24th and 30th of April, the known period of the ſhip's arrival at Jamaica. I will not detain your Lordſhip long upon what paſſed at Jamaica,

Jamaica, as to Bourne's waiting for Sir James Wallace in the duſk, his ruſhing out of a negro-hut, his ſhewing that he had his hand upon his ſword, and was ready to fight him; which Mr. Bourne conceives warrants him in ſaying that he challenged Sir James Wallace there (but the fact of which challenge is denied by Sir James Wallace). With all my heart, let him have the credit of it: let it be believed that he did challenge Sir James Wallace, his ſuperior officer, and in a time of actual ſervice: but, if he will have the credit, let him ſmart with the puniſhment of it alſo. Sir James Wallace is more jealous upon this ſubject than I am; and I am now ſpeaking not his ſentiments, but my own.—Upon his return to England, after a voyage of extraordinary diſtreſs and miſery on board the Hector, one might have expected that the violence of his paſſions would have a little ſubſided, and that he would have found himſelf leſs hoſtilely diſpoſed towards Sir James Wallace: but it was not ſo with Mr. Bourne; his old rancour and reſentment againſt Sir James Wallace ſubſiſted in full force; it was all locked up in his breaſt, ready to burſt upon Sir James Wallace's head, whenever occaſion ſhould throw him in his way. But occaſion he did not wait for, he ſought it: he went to Bath after him; he ſends the waiter of the inn to him, with a meſſage, and that letter which your Lordſhips have heard. I will here ſhortly obſerve upon the manner in which that letter was ſent, and the effect it was intended to produce: it was ſtuffed with invective, with a view to provoke Sir James Wallace either to challenge him, or to come to him immediately at the inn. How is he prepared to receive him? He retires into a private chamber, with a ſword and piſtols upon the table; with an order to the waiter, that, if Sir James Wallace came, he ſhould ſhew him into that room.

Is the aſpect of any thing like honourable combat to be diſcovered here? It looks infinitely more like a preparation for that offence, which the firſt count of the indictment was framed to meet, and which upon the whole of the evidence would, I think, have been well ſupported; for taking the whole together, his former endeavours at rencontre in private in the duſk; the ſending for Sir James Wallace to the inn with his ſword and piſtols ready in the room; the ſending for him without a witneſs, and probably unarmed, and that too at firſt upon an anonymous meſſage, ſeem to me to go the whole length of coupling the aſſault at Charing-Croſs with an intent to murder, and of courſe of ſuſtaining that count in the indictment. But Sir James Wallace did not chooſe to attend either upon the ſummons of a gentleman without a name, or upon a ſummons with the name of Bourne tacked to it: he choſe not to ſee him; but, conſidering that the diſpoſition of Mr. Bourne towards him warranted him in the uſe of all due caution, he put his piſtols in his pocket before he went out. There is hardly any man that hears me, who has common prudence, and common reſolution, but would have done the ſame. Mr. Bourne meets him, he holds up his cane over Sir James Wallace's head; Sir James produces his piſtol to protect himſelf from inſult.—I muſt obſerve here the looſeneſs, or rather willful incorrectneſs, with which Mr. Bourne tells his ſtory; for he tells this ſtory about his ſtriking Sir James Wallace, different ways: he tells Mr. Madden, "I ſtruck him at Bath; I caned him." Upon being told afterwards by Mr. Madden that Sir James Wallace had contradicted it, and Lord Cork had heard it had not happened; that Mr. Davies, who ſaw the whole, ſaid he had not ſtruck him, and that he declared to Mr. Davis that he could not do it, from motives of regard to his own perſonal ſafety; he ſays, "I don't know what they call not ſtriking him; I held my cane over his head, and touched his hat." Here he admits he did not in fact ſtrike Sir James Wallace, though he had ſtated before to Mr. Madden expreſsly that he did. How this gentleman can ſo differently relate the ſame ſtory, I acknowledge, ſurpriſes me; but there are, I believe, in the ſchools of honour, different ideas of veracity itſelf from what we ordinary men entertain.

I have now done with all the obſervations I had to trouble the Court with on the facts:—I will only ſay one word more in anſwer to Mr. Solicitor-General and Mr. Erſkine, as to Sir James Wallace being the aggreſſor in the matter of the libel.—I don't know whether your Lordſhips attended particularly to the affidavit of Mr. Abbot.

Court. Yes, I did. He ſays Mr. Bourne ſaid he would print it in the news-paper.

Mr. *Law.* Yes, and he told Lord Cork, that if Sir James Wallace did not fight him upon a challenge he then meant to ſend him,

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he would put the whole ſtory in the news-paper. Now Sir James Wallace knowing this, when he ſaw the paragraph on that very ſubject in the news-paper; to whom could he, or to whom would any man impute ſuch a thing, but to the perſon who had threatened he would ſend it to the news-papers? He did impute it, therefore, to Mr. Bourne; and in conſequence of that opinion, did publiſh the letter which has been the ſubject of Mr. Solicitor-General's reprehenſion. But, ſays the Solicitor-General, if ſuch a letter had been publiſhed by Mr. Bourne, it would have juſtified him in the ſentiments of men, though not at your Lordſhips bar: it would have juſtified him, if he had committed murder. But, whatever inferences may be drawn from the publication of Sir James Wallace's letter, in mitigation of the libel, none can in mitigation of the aſſault: for Mr. Bourne himſelf deſcends to this conflict in the news-paper; and at the diſtance of ſeveral weeks afterwards, when Mr. Bourne knew Sir James Wallace had brought that libel before your Lordſhips; when an indictment for it was actually preferred; he, outraging your Lordſhips authority and the laws of his country, fell upon Sir James Wallace, and treated him in the way which has been proved. As to what Mr. Bearcroft has obſerved, that a ſingle blow would have equally anſwered the purpoſe of ſtigmatizing Sir James Wallace, it certainly would: but he did not ſo content himſelf; the violence which accompanied that tranſaction, ſeems to confirm the ſuſpicions which his conduct at Jamaica and Bath naturally gives riſe to, that he meant ſomething more than to ſtigmatize the character of Sir James Wallace.

As to the good character Mr. Bourne had on board the two ſhips, the Iſis, and the Hector; be it ſo: I am not inclined to deny him any praiſe, he may be intitled to. The gentlemen on board the Warrior are, however, much to be pitied, that he exhauſted all his good-nature on board thoſe ſhips; for it appears, that from the moment he came on board the Warrior, he was the firebrand of diſſenſion and ſtrife amongſt them. That he endeavoured to ſink the commander in the eſtimation of the people he commanded, is proved by almoſt all the gentlemen whoſe affidavits have been read on the part of the proſecution, who, though they differ a little in expreſſion, agree materially as to this and other facts. But, my Lords, it ſhould ſeem as if this gentleman, doubting whether he had already ſufficiently inſulted the dignity and gravity of this Court, was willing to make one further experiment upon its patience; and I do beg your Lordſhips, before I conclude, to permit me to comment upon a matter which Mr. Solicitor-General has upon this, as well as upon former occaſions, openly avowed, and to which Mr. Erſkine has not obſcurely alluded; I mean the circumſtance of Mr. Bourne's conduct, in the whole of this buſineſs, having received the approbation of moſt of the marine corps in the kingdom.

Court. You need ſay nothing of that.

Mr. *Law.* I do conceive it conſtitutes a very aggravated part of this caſe.

Court. They give their opinions without knowing the caſe.

Mr. *Law.* I conceive, if ſuch are the proceedings of a Court of Honour, that I am happy in not having been educated in the principles and practice of ſuch a Court.

Court. A Court of Honour does not judge from hearing one ſide only.

Mr. *Law.* It ſhould not. A genuine Court of Honour cannot; for juſtice is the baſis of honour, and honour cannot ſubſiſt without it. Many of the Gentlemen who compoſed this Court, ſtand high in ſituation in this country; high too, I believe, in profeſſional character and eſtimation: they may deem of their own honour and the honour of their corps as they chooſe; but thinking as I do, I would not for the world's wealth have ſet my hand to that foul paper; I would not have condemned an officer, in matters of diſcipline and honour, without hearing that officer, and knowing that he had no defence. Let theſe gentlemen feel as they may, their ſentiments of honour and mine are widely different: I am not aſhamed of my own. Upon the whole, if your Lordſhips ſhould think that the matter ſuggeſted in the affidavits of the defendant, inſtead of mitigating, inflames the offence of which he ſtands convicted;—if, making all due allowance for human infirmity, there ſhall yet appear no adequate cauſe for this reſentment, which has burſt out ſo often, in various ſhapes of inſult, invective, libel, and at laſt of bodily outrage;—if your Lordſhips ſhould think, as doubtleſs you muſt, that the peace of ſociety has been grievouſly diſturbed on this occaſion, a dangerous ſpirit of diſobedience and diſorder excited and encouraged throughout large divi-

ſions of the military ſervice of this kingdom; —if your Lordſhips ſhould feel that your own dignity and honour require ſome reparation upon this occaſion; I truſt your Lordſhips will, in the ſevere and ſmarting puniſhment of this young man, vindicate all theſe outrages; that he, and all other wrong-headed, licentious, and daring young men like him, may know that there is yet ſome force in the laws, ſome vigour in the magiſtrates that adminiſter them.

As to the particular mode of puniſhment, which your Lordſhips may think fit to adopt on this occaſion, I ſhould not feel myſelf at liberty to ſay any thing, if ſomething on this head had not fallen from the counſel on the other ſide, and which will, I truſt, warrant me in making this one obſervation: that in a caſe like the preſent, where there have appeared ſo very numerous a body of candidates for their ſhare in the merit of the crime, it may fairly be conjectured, that many of the ſame gentlemen would not be unwilling to alleviate the puniſhment by participation; and I would beg leave to ſuggeſt to the Court, that the only puniſhment which can be eluded, as it is alone capable of ſuch participation, is a pecuniary one.

Mr. ADAM.

AFTER the very minute attention your Lordſhips have paid now for almoſt five hours to the cauſe before you, I ſhould certainly abuſe the indulgence of the Court, and ſhould do no material ſervice to my client, Sir James Wallace, if, after what you have heard from the three learned gentlemen who have gone before me with ſo much minuteneſs, accuracy, and ability, I were to detain your Lordſhips with a further detail of the particulars of this ſingular hiſtory: I ſhall therefore confine myſelf only to a few general obſervations upon the nature of the caſe before your Lordſhips, and to ſtating any particular fact that I think may not have been brought fully forward to the notice of the Court.

I will beg leave to ſtate to your Lordſhips, that in the ſituation in which you now are, you are perhaps more ſingularly circumſtanced than this Court, appointed and inſtituted for the purpoſe of ſuperintending the peace of the country, ever was at any former period; for that has been brought into notice, and that has been diſcuſſed before your Lordſhips, which it were almoſt wrong to ſuppoſe that your Lordſhips ever thought of, or had ever known. At the ſame time, as the honour of Mr. Bourne has been mentioned in the moſt emphatic terms, both by Mr. Solicitor-General and Mr. Erſkine, it would be improper and imprudent upon my part, and, I think, unjuſt to my client, whoſe honour ſtands recorded, whoſe military bravery ſtands exalted almoſt above that which any individual of this country knows; that country, which is benefited by his ſervices, for which he has ſpilt his deareſt blood, in defence of whoſe quarrels he has terrified our enemies; it would be unjuſt to Sir James Wallace, to ſuppoſe that, with all thoſe qualities, he ſhould not have the ſame ſenſe of honour, in every minute part of his conduct, both public and private—it would be improper that it ſhould not be told that he was ready, upon every occaſion, to meet Lieutenant Bourne in any way that was proper, and to treat him like a gentleman. If I were not to ſay this, I ſhould do injuſtice to that man, whoſe name ſtands highly recorded in the annals of this country, as one of the firſt naval characters that ever exiſted.—Mr. Erſkine has ſtated, that, if he had been injured as Mr. Bourne has, he would have followed Sir James Wallace through all created ſpace. Allowing, for a moment, that Sir James Wallace has injured Mr. Bourne; knowing the ſentiments of Mr. Erſkine, knowing his feelings of honour, I know he would have done ſo; but he would not have come out of a negro hut in the duſk of the evening to have attacked Sir James Wallace—he would not have ſent a waiter, without communicating his name, to Sir James Wallace's houſe, to deſire him to come to a dark room in a tavern—he would not have done any of theſe things that Mr. Bourne has done; but, like a man of honour, a man of feeling, he would have vindicated that honour in the open face of day, in violation, it is true, of law, but in vindication of that honour which is dearer to any man than life, and which men muſt, on ſome occaſions, vindicate, in defiance of the laws of the country. I cannot help feeling ſomewhat warm, when I know that, by a ſeries of good-nature, by continued acts, in deſpite of every ſpecies of diſobedience of order, Sir James Wallace has drawn upon himſelf the reſentment of Mr. Bourne.

What is the ſtate of the caſe? Mr. Bearcroft ſtated it ſo minutely, that it would make

make it improper for me to dwell upon particular circumſtances; but from the period that Bourne came on board the Warrior, till the time of his arrival in Jamaica (where Sir George Rodney refuſed him a Court-Martial, but ſeparated him from that man, to whom, it may be preſumed, Sir George Rodney knew he had behaved ill), there were repeated inſults, and acts of diſobedience, not reſented in the firſt, the ſecond, or third inſtance, by Sir James Wallace; till at laſt, at Madeira, Bourne ſends him an inſulting card; and not till then did Sir James Wallace ſay—not with a particular emphaſis, not with flaſhing eyes, and clenched fiſts, but calmly and deliberately, putting a conſtraint upon his own nature, and the nature of every brave man, Sir James Wallace tells him, he can no longer have any acquaintance with him.

The ſecond inſult Sir James reſents is that of the ward-room, in which he behaves with equal temper and diſcretion; for, inſtead of flying in a rage at the provoking inſults of Bourne, he tells him calmly, he is a very troubleſome man. Theſe repreſentations, my Lords, muſt be true; they are ſet forth in our affidavits, which are ſtrengthened extremely by the circumſtance that has been mentioned of the Maſter, who ſhould have been preſent at ſome of theſe inſtances, being in bed, by reaſon of his leg having been ſhot off on the 12th of April, ſtrengthened by the circumſtances attending Lieutenant Markett, who is the witneſs that particularly extols Mr. Bourne's behaviour. This gentleman talks of Mr. Bourne's conduct upon the 12th of April. (I mention this as a circumſtance tending to ſupport the veracity of our affidavits, and to deſtroy the credibility of their's: I don't mean to impeach Mr. Bourne's readineſs to do his duty, and his courage, on the 12th of April; I mean to apply it merely to the circumſtance of their affidavits.) —Mr. Markett ſtates, that he ſaw Mr. Bourne that day act with the greateſt ability, and with the greateſt courage. The fact was, Mr. Markett was that day under arreſt, on account of bad behaviour on the 9th of April, three days preceding.

There is another circumſtance which it is material to know, that even if he had not been under arreſt, I am informed by gentlemen of the profeſſion, his proper ſtation was on the lower deck, and Mr. Bourne's was on the poop: ſo it was as impoſſible for him to know any thing of the behaviour of Mr. Bourne that day, as it would be for me to know what is now paſſing in the Court of Exchequer.

Court. How does it appear that he was under arreſt?

Mr. *Adam.* I believe, from the affidavits.

[Mr. *Bearcroft* ſaid, It is only a marginal note; it is not ſworn.]

Mr. *Adam.* I am informed, by Mr. Bearcroft, it is not ſworn; and by Mr. Erſkine, that if Mr. Markett was under arreſt, he might be in any part of the ſhip he pleaſed; but neither he, nor Mr. Solicitor-General, are willing to admit he was under arreſt. If he was not under arreſt, the neceſſary conſequence is, he muſt have been upon his ſtation; and the ſtation in which he muſt have been, made it abſolutely impoſſible he could have ſeen it; ſo that the error I have accidentally fallen into, makes me able to ſtate it ten thouſand times ſtronger againſt the credit of Mr. Markett, and in favour of our affidavits.

I find myſelf, through the whole of this buſineſs, ſo extremely deſirous, not ſo much to bring the defendant to puniſhment, as to bring forward to view the character of Sir James Wallace, which has been ſo ſhamefully traduced to the world upon this occaſion, that it is impoſſible for me not to detain your Lordſhips a few moments longer.

I ſhall ſtate ſome circumſtances with regard to the letter publiſhed by Sir James Wallace, which have not been mentioned by the learned gentlemen that went before me; and I am perfectly perſuaded, that, by ſtating thoſe circumſtances, I ſhall take off the effect which the Solicitor-General and Mr. Erſkine have given it. The previous threats of Bourne to attack Sir James Wallace, in the news-papers, are not only in our affidavits; but the fact is, they are in Mr. Bourne's own deliberate handwriting; for in his letter of the 7th of December, 1782, at Bath, he writes to Sir James Wallace, *that he ſhould expoſe him in the public prints.* Upon the 16th day of December the publication appears in the Morning Herald; —upon the 20th Sir James Wallace's letter is inſerted;—and upon the 23d, the libel; upon which Mr. Bourne ſtands convicted, by not appearing. Was there not the ſtrongeſt reaſon in the world for Sir James Wallace to ſuppoſe, having Mr. Bourne's written letter in his poſſeſſion, that Mr. Bourne was the author of theſe anonymous publications in the Herald? And will any perſon pretend to ſay, that

that a man with the nice feelings that military men, from their education, neceſſarily have—who, in all the intercourſe I have had with them, have felt more poignantly from public abuſe than men who live in this metropolis, and are daily and hourly expoſed to it—was it not natural for Sir James Wallace at once to fly to vindicate himſelf before that public?—And was it not natural, with this letter in his pocket, that he ſhould accuſe Mr. Bourne of being the author of that ſcandalous and anonymous publication? That circumſtance alone is ſufficient to take away all the effect attempted to be produced againſt my client, from his having publiſhed in the news-paper, as well as Mr. Bourne.

As to the nature of this libel, if the falſehood of a libel is an aggravation, I am ſure, from what this country is reminded of by almoſt every Gazette during the laſt war, Sir James Wallace's conduct is the moſt complete and poſitive proof of the falſity of that aſſertion: and if falſity is to aggravate the crime, Bourne ſtands the moſt guilty and atrocious that ever any man did, in any capacity or ſituation of life.

With regard to the ſubject of the aſſault, if Mr. Bourne had had no other idea but that of getting Sir James Wallace to ſettle the matter with him in a way that the Courts of Law dare not take cognizance of, and which I am almoſt aſhamed again even to hint to your Lordſhips—if he had deſired that—the Solicitor-General has told the Court there are trivial circumſtances of inſult by which a man of honour is more ſeverely wounded than by blows—a fillip on the noſe, or any thing that would have turned Sir James Wallace into ridicule, was much more likely to accompliſh that end. What then are we to infer from this? Either that Mr. Bourne was ſo exaſperated in his mind, as to make it impoſſible for Sir James Wallace to meet him, which, from his conduct in Jamaica, and indeed every-where, it is fair to conclude; or that he meant to exaſperate Sir James Wallace to be the breaker of the peace, to force him to ſend a challenge, inſtead of receiving it.

I ſhall only add a word or two more, as to the reaſon which induced Sir James Wallace to bring this matter before a Court of Juſtice. It is ſuggeſted, in the reſolutions of the Marine Corps, that Sir James Wallace has done improperly, as an Officer and a Gentleman, in bringing this matter before a Court of Juſtice: the ſingular letter of that Corps, where they condemn Sir James Wallace unheard and unſeen, was hinted at by my learned friend who opened this buſineſs: I will venture to ſay, not only from all I know of Sir James Wallace perſonally, but from all that appears upon the face of this cauſe, that there is no reaſon whatever to ſuppoſe that he had any motives of vindication whatever in the meaſures he has taken; he felt himſelf aggrieved and inſulted; he found lies propagated in every coffee-houſe and news-paper, with regard to him; it was refuſed him to have that matter tried by a Court-Martial, for what reaſon I don't know, for the time preſcribed for a Court-Martial had not expired.

Court. That is the reaſon given.

Mr. *Adam.* Sir James Wallace applied for a Court-Martial here upon Lieutenant Bourne, and I apprehend he was perfectly in time. The act of parliament, if I recollect rightly, limits it to one year after the return of the ſhip; and Sir James Wallace made his application within that time. What other method had Sir James Wallace, when he found he was barred in this method of bringing the facts fairly and authentically before the world, with regard to this groſs ill conduct of Mr. Bourne, but that which he has taken?—I will endeavour to detain your Lordſhips with a few words, which are more emphatical than any I can ſtate, in order to ſhew your Lordſhips Sir James Wallace's motives: they are the words of Lord Chief Juſtice Scroggs, ſpoken from the place where your Lordſhips now ſit, in 1679, on grounds of ſeveral libels that had been publiſhed, reflecting upon the manner in which he had diſtributed juſtice. He ſays, "Firſt, I would have all men know that I "am not of ſo revengeful a nature, and ſo "nettled with aſperſion, but I would have "paſſed by this and more; but the many "ſcandalous libels which are abroad, and "which reflect ſo much upon the public juſ-"tice—(now change the words *public juſtice* to *naval ſubordination*)—"which reflect ſo "much upon the ſubordination of the navy, "as well as upon my private ſelf, make it the "duty I owe my place to defend the one, and "the duty I owe my reputation, to vindi-"cate the other." It is impoſſible for me to uſe words ſo applicable to the ſentiments and feelings of Sir James Wallace as theſe words are. I ſhall only add further, to convince

vince your Lordſhip and the world that revenge had no concern in this buſineſs, but mere juſtification of Sir James Wallace's conduct in the eyes of the world, that if Sir James Wallace had been inclined to have brought an action inſtead of an indictment in this caſe, it is probable that an Engliſh Jury, feeling that the repoſe of a man who had ſerved his country thus faithfully and effectually, had been diſturbed by this means, it is natural to have ſuppoſed ſuch Jury would have vindicated Sir James Wallace's character by ſuch damages as Mr. Bourne could not have paid.—If vindiction had been his motive, it would have been eaſy for Sir James Wallace to have taken that line;—if he had, he would have diſhonoured himſelf and the cloth he wears, and diſgraced the character of a brave Officer: but in the mode he has taken, he has done no more than vindicate his reputation, not inconſiſtently with the laws of honour, and agreeably to the laws of his country.

(REPLY.)

Mr. SOLICITOR GENERAL.

YOUR Lordſhips will not expect, at this late hour, that I ſhould go very minutely through all the circumſtances that have been diſcuſſed by four of my learned friends: I ſhall not do it; for I was not able to hear one word of the affidavits as they were read. I caſt my eye over them; and if I do not perfectly miſtake it, all my learned friends have endeavoured to avail themſelves of a great number of ſuppoſed contradictions in the teſtimony, which even if it were ſo, (concerning which, I ſhall not expreſs myſelf with all that ſtrength of language which my learned friends have done) that does not appear to me to preſs much upon the preſent occaſion.

In the firſt place, let us ſee whether, in the nature of the thing, it is poſſible that my client's caſe, conſidered as a matter of fact, either is, or can be materially contradicted.—The fact alledged againſt Sir James Wallace, on the part of Mr. Bourne, is, that he, in the uſe of his authority and command, had treated him with great rudeneſs, incivility, cruelty, and oppreſſion. He ſtates the circumſtances, that he had attacked him with all the force of a madman; that his action and his geſture were the moſt affronting; that his language and his conduct upon it were moſt deliberate: and in this he is confirmed, in ſo many words, by Lieutenant Monke, who ſtands before your Lordſhips uncontradicted by any perſon, and is incapable of being contradicted; for he was the only perſon preſent. Lieutenant Monke ſtates that which no mortal man believing it (and Mr. Bourne and Mr. Monke are both perjured if it is not true) which no man could help feeling as a great inſult, cruelty, and oppreſſion.

When they arrive at Jamaica, this gentleman applies to Lord Rodney for a Court-martial; and, as he ſwears, ſtates the particular articles of complaint, in this application, which expreſsly refers to indecency, cruelty, oppreſſion, and ungentleman-like conduct in his ſuperior officer: he feels himſelf inſulted; the people there feel themſelves inſulted and degraded: he ſeeks that reparation. Mr. Silveſter,—my friend Mr. Law particularly, in ſomewhat more gentle language, took it for granted, that all this is a fiction and invention. Is it to be conceived that we are in Fairy Land? If it be not true, Lieutenant Bourne's conduct is totally inconſiſtent; for can your Lordſhips believe that he would deſire a Court-martial upon Sir James Wallace, for cruelty and oppreſſion, for only ſaying civilly, without any menacing poſture, or any thing like it, "Sir, you ſhall not walk with me;" for that is all the gentlemen ſay he ſaid? Beſides this, even Mr. Varlo, and all the reſt of them, in their affidavits, acknowledge this fact, which is conſiſtent with our caſe, but totally inconſiſtent with theirs; that from that moment the gentleman felt himſelf ſunk and degraded, and even ſpoke of himſelf as a priſoner. That tallies exactly with the account given by Mr. Bourne and Mr. Monke, who were preſent at the time; but it is totally irreconcileable with their *recollection* of the facts; for I will not uſe the language the gentlemen on the other ſide thought proper to uſe. Mr. Bourne, if he has the feelings I give him credit for, muſt have ſuffered much more from the language he has heard this day, than from any thing he has done; for he has been repreſented, by ſeveral of the learned gentlemen, as not only having made an affidavit that has not a word of truth in it; but that he is not to be kept company with, from this day, to the day of his death; ſo he is in

a pretty ſituation, truly: for, had he acted otherwiſe, he is to be expelled all human ſociety; and having acted thus, he is to be expelled too.

Your Lordſhips will compare all the affidavits, and you will ſee in what abundance of inſtances, (beſides having the credible, the reaſonable, and the plain fact on his ſide) he is confirmed by many, many witneſſes, whoſe credit your Lordſhips are to weigh with thoſe that contradict him: but in my opinion, there is an affectation of treating this cauſe, with matters totally inapplicable to it; for by confounding all ideas of times, Mr. Bourne is ſuppoſed to be a very great aggreſſor; and Sir James Wallace not at all.

Now what is it that this gentleman comes to receive judgement for? It is for a libel, publiſhed the 22d of December, and for an aſſault after that period. Now, what was the ſituation of Lieutenant Bourne, at the time when each of thoſe offences (for I am bound to conſider them as offences) was committed; at the time when the libel, as it is called, was publiſhed? He is admitted now, before your Lordſhips, to have been publiſhed to the world, by this letter, under the ſignature of Sir James Wallace himſelf, as a vain boaſter, a notorious lyar. The words are falſe aſſertions, which ſeem to me to mean the ſame things; a vain boaſter, a notorious falſifier, if they like that word better, and a man who gives himſelf the air of having aſſumed the courage of a gentleman, without any pretence or foundation, in fact, for it. This is publiſhed by Sir James Wallace. My learned friends argue this point very differently: Mr. Bearcroft ſays, "I am aſhamed of his having done ſo, and he is aſhamed of it himſelf; but in a fit of irritation" (for that was my friend's expreſſion) "he has pleaded before the juriſdiction of the public."—Says my learned friend behind me, "Why, he did wrong certainly, but he thought he was doing right: he made a ſmall miſtake; he thought he was repelling an injury of Lieutenant Bourne; and the truth is, I admit no injury had been done him by Lieutenant Bourne. But he had reaſon to think ſo; for Lieutenant Bourne had ſent him ſeveral—challenges they will not admit them to be, but ſeveral uncivil meſſages, at Bath and other places." He had given him notice he would print ſomething; and therefore Sir James Wallace, ſeeing ſomething in print, ſeeing a little, preſumed a great deal, and jumped to the concluſion—that Mr. Bourne was the author of this libel. What, then, is Sir James Wallace to abuſe my client in the tendereſt point, and afterwards excuſe it in a Court of Juſtice, by ſaying, "I formed a wrong judgment; I conceived Lieutenant Bourne was a libeller, and therefore I turned libeller myſelf: but now I know that I libelled him, and not he me, I will proſecute him ſtill as a libeller, for I have made him one?"—*Aut inveniam, aut faciam*, is the language of Sir James Wallace. To be ſure, he did not abuſe me till I wrote ſuch a paper upon him as would have moved the apathy of a Stoic; if his heart had been as ſtony as a flint, it would have drawn out of it thoſe words of reſentment and anger you read in this paper. Then who has made this libeller? Himſelf. It is now an admitted fact, that before Lieutenant Bourne had publiſhed a line about Sir James Wallace, Sir James had attacked him, as a man deſtitute of courage, that ſtill boaſted of his courage; and as a man who expreſſed his willingneſs to meet Sir James Wallace in the field, "though," ſays Sir James, "I can demonſtrate I was ready for him at Jamaica, Bath, and London: he is a pretender; and whoever takes him to be a gentleman of character, is miſtaken in the matter."

Now this is the original, the firſt libel. Mr. Bearcroft, with great candour, ſaid, "I do think, that, as to the matter of the libel, it pretty nearly makes an end to that charge." My learned friends behind ſeem to be of a different opinion; for, ſay Mr. Adam and Mr. Law, "as Sir James Wallace really thought Mr. Bourne was the author, he had a right to treat him as the author." I have no conception of that argument: there is not a pretence in evidence that Mr. Bourne cauſed it, or provoked it: nobody has or will ſwear that he had the leaſt privity with that which Sir James Wallace now alledges as the provocation. Then in this Sir James Wallace is the aggreſſor; in a point of the utmoſt magnitude. I ſaid it before, and I ſay it again, your Lordſhips muſt know, that, whether theſe opinions of honour are correct or incorrect, it was impoſſible for Mr. Bourne to live in England in his ſtation, publiſhed

to

to the world, by a man of Sir James Wallace's note and character, to be a coward. I will not follow the example my friends have ſet me, of traducing the character of Sir James Wallace: I ſaid before, I knew nothing of his character: he may be very illuſtrious; I dare ſay he is ſo; I have heard much to his commendation, and nothing againſt him.

A ſhaft thus envenomed, out of ſuch a quiver, would do much execution. If it had been Sir James Wallace's mate, or any man of common reputation on board a ſhip, Mr. Bourne might have affected to have deſpiſed it; but he could not, in this caſe, do it; there is not a man living who would not have ſaid, "He is ſummoned to the dead, if he does." But addreſſing your Lordſhips ermine, I do not mean to ſay any thing unbecoming your ſituation; yet I may aſk,

"Ye prudes in virtue, ſay—ſay, ye ſevereſt,
"What would ye have done?"

You could not have acted otherwiſe, in a like ſituation; it is impoſſible.

Now a word as to this aſſault: I conſider this aſſault of Sir James Wallace as my client conſidered it, undoubtedly: he ſays, "This paper of Sir James Wallace is the *experimentum curioſum*. I am publiſhed to mankind as a poor, miſerable, contemptible wretch; live or die, I muſt deliver myſelf from this imputation." My learned friend calls this high-handed violence, that requires the chaſtiſement of the Court. High-handed violence! Why, my Lords, I confeſs it is not what the law calls ſelf defence; no, a man may not do that, in defence of his reputation and honour, that he can do in the protection of his little finger, or of his little-finger nail. And this is the principle that obliged Mr. Bourne to act as he has done. "Why I muſt do that with Sir James Wallace, which ſhall leave with him no poſſibility of repreſenting me as a man declining perſonal combat, and ſo far as deficient in perſonal courage; therefore, I muſt do it, be it ever ſo irregular." And it is in obedience to this call of reputation, of ſpirit, and of honour, that he has committed this offence.

Your Lordſhips heard a great deal of the rudeneſs, indecency, and outrage, offered the Court, by reading a great number of affidavits. I am very ſure that no outrage was meant; and I conceive, that all that call for vengeance is exceedingly miſplaced upon the perſons that have made the affidavits; and, with your Lordſhips permiſſion, I will ſpend a moment or two in ſhewing why. "The reaſon, ſays Mr. Bourne, why I do this, is becauſe Sir James Wallace has attacked me unfairly; he has publiſhed in the news-paper, that I declined to meet him, and never would come to the point. Now, Mr. Webber, you know ſomething of this. Am I open to this repreſentation, or am I not? You know what paſſed at Bath. Have you any ſcruple to do that which is your duty, for a man who, if he is not innocent in the eye of the law, yet is not guilty in the ſenſe that is imputed to him? Will you tell the Court the truth, and how that fact was? I might be deficient in prudence, and in reverence to the law; but was I deficient in point of perſonal courage; aye, or no?" The gentleman ought to anſwer. "I may have been *particeps* with you in that which was not regular: I might have paid more attention to the duty of a ſoldier, than to the duty of a citizen: but I owe you the truth; every body ought to know how far this is a calumny, and how far this is the truth." And in the courſe of legal judicature this man ſwears to a tranſaction in which he was a party. Why, my Lords, we live in ſtrange times, if this is ſuppoſed to be an offence againſt the decorum and the rules of juſtice.

Court. He does not ſtate the fact; he gives his opinion about it.——The Court take the opinion of nobody upon the fact.

Mr. *Solicitor-General.* All he ſays upon that, as I recollect it, is that he declines to give him any advice upon the ſubject; adding, it was too delicate a ſituation for him to adviſe in: he adviſes Mr. Bourne to conſult a Mr. Heathcote, whom he does conſult; and then he uſes general expreſſions, that Mr. Bourne appeared to him to have acted with propriety and ſpirit; and, as far as he could judge, he could not have acted otherwiſe than he did.—Your Lordſhips ſee Mr. Law directly attacks Mr. Webber: "he goes with a challenge, ſays he, to Sir James Wallace; he approves the letter; is a party to the challenge, and he abets this act."—Sir James Wallace ſays, "At Bath he never would come to the point." (Your Lordſhips ſee all this affidavit is made with a reference to this ſuppoſed libel, that puts Mr. Bourne's conduct in iſſue in this very buſineſs) Now, ſays Mr. Bourne, "right

or

or wrong, the truth muſt come out—*ruat cœlum!* The Court of King's Bench will cenſure me as a dueliſt; they may ſay I wanted decorum, and was not a peaceable good ſubject: but they ſhall not ſay, upon Sir James Wallace's evidence, or any body's elſe, that I am a coward; that I acted as ſuch at Bath, where you witneſſed every ſtep of my conduct, every word I ſaid, and letter I wrote. This ſhall not be permitted to go abroad into the world; therefore, Mr. Webber, tell how the fact is." Mr. Bourne knowing that he has treſpaſſed againſt the law, and in what reſpect, and to what degree alone he has treſpaſſed; but feeling that he had a provocation that no human being, ſuſtaining that character, could poſſibly ſubmit to; it was his duty, if there were witneſſes living on the habitable earth, to bring them forth before the Court to prove the facts. "I may have many faults, failings, paſſions and errors; but I am not ſtained and blotted with the guilt and ſhame of cowardice." That is all that theſe affidavits are made to prove, and there is no pretence to impute it to any thing elſe. This gentleman being charged with this offence, ſo fatal to his honour and reputation, he publiſhes an account of all that paſſed upon the ſubject; and he calls theſe witneſſes, that knew every ſtep of the tranſaction, to prove it too; and that makes it neceſſary to give an account of the whole tranſaction of what paſſed in Jamaica, of what paſſed in Bath, and of what paſſed in London.

Now I will reſt the caſe upon that ſingle iſſue.—Can your Lordſhips ſay that Mr. Bourne has been too alert in provoking Sir James Wallace to perſonal combat; or has he been (as this news paper publication of Sir James Wallace's, not merely inſinuates, but poſitively expreſſes it) tardy, and puſillanimous in his character? All my friends go on juſt the contrary idea; for they juſtify Sir James Wallace, at great length of argument, for not condeſcending to meet this gentleman in ſingle combat.—Sir James Wallace diſdains that ſort of argument. "I did not avail myſelf of my character, as Captain of a man of war; I was completely armed, and ready always to meet him at Jamaica, Bath, Briſtol, Europe, Africa, Aſia, and America." This is the language of Sir James Wallace. "I have proof there was no time when I was not ready to meet him." The gentlemen then ſay, what a cowardly thing was it, to ſend to him to meet him in a dark room, at an inn at Bath; and to come alone! Who invited him to come alone? Why, that is all a fiction. Sir James Wallace might have brought his whole ſhip's crew with him, if he would: there was not an intimation of any privacy in the matter; there was not a hint of any thing like it. Sir James calls upon Mr. Bourne, to ſhew whether he was, or not, active in this buſineſs; he imputes to him, that he was ſlack and tardy. I think, in anſwer to that imputation, Mr. Bourne has a right to ſay, "By calling upon me to anſwer one crime, you make me reveal another; for, in order to avoid the imputation of cowardice, you oblige me to ſay, that I have been more ready to meet Sir James Wallace, than perhaps I ought to be.—You ſay you wanted to draw me; but I never would follow you. I went from town to town, and place to place after you. Now there is an end of it; I will ſeek you no longer, but publiſh you to all the world as a coward, and a baſe, abject man."

Upon this caſe, ſo ſtated, your Lordſhips are to decide. I have never ſaid that my client is innocent of the charges; the ſituation of the caſe precludes me from ſaying any ſuch thing: the degree of guilt your Lordſhips are to judge of: but this I know, that whenever, and wherever, this letter of Sir James Wallace is read, eminent as he is, and the more for that eminence, every man of honour, every gentleman, every ſoldier, every living ingenuous man will feel, that the ſpirit of honour, which is a vaulting principle, cannot be reſtrained from treſpaſſing the limits and bounds of decorum, when the imputation, if it is not repelled, ſtrikes a man out of the liſt of every thing that is reſpectable and worthy in ſociety.

In that ſituation Mr. Bourne ſtands before your Lordſhips. I hope that he has done nothing that a wiſe and good man might not have done, and would not have done, in the ſame circumſtances. That he has treſpaſſed againſt the laws of his country, I am ready to admit; but that he did it with a degree of provocation, that it was not in the power of human weakneſs to avoid.

Court. The affidavits are very numerous. We will look over them, and prepare, as ſoon as we can, to give judgement. At preſent I will order the defendant to be brought up again

again on Tueſday. There is a great deal of evidence, that Mr. Bourne meant to provoke Sir James Wallace, to give him a challenge: but I do not ſee that there is any evidence of his writing to Sir James Wallace, to appoint time or place to meet him.

Mr. *Law*. No; there is no evidence of that.

Court. There is a letter to Sir James Wallace, from Mr. Bourne, ſaying, he would print in the news-papers, his letters; which letters contain every perſonal abuſe There is likewiſe a witneſs ſwears, he declared to him, over and over again, he would print them all in the papers. Now, we want to ſee what the letter is, which Sir James Wallace took to have been written by Mr. Bourne.

A Copy of the Paragraph above alluded to, which appeared in the Morning Herald *of* Monday *the* 16*th of* December.

" A certain Naval Character, who has made " more than one hazardous *Experiment* during " the preſent war, is ſaid to be at this time ſo " aukwardly ſituated, in conſequence of a per- " ſonal difference with a Brother Officer, that " he ceaſes to be the *Nonſuch* of valour he was " once taken to be. It has indeed been ob- " ſerved, that he gave up the *Warrior* ſome " time ſince; but his greateſt enemies will " hardly think ſo meanly of him, as to con- " ceive he means to fly to the other *Extreme*, " and be terrified at a country from whoſe " *BOURNE* no traveller returns."

COURT of KING's BENCH,

July 9, 1783.

Mr. CHARLES BOURNE *being brought into Court, in Cuſtody of the* Marſhal, *to receive Judgement, was addreſſed by Mr. Juſtice* WILLES, *as follows:*

YOU, Charles Bourne, are brought up to receive the Judgement of this Court for two offences; for a violent aſſault on Sir James Wallace, on which indictment you have been convicted; and for publiſhing a falſe and ſcandalous libel, which you have confeſſed, and ſuffered judgement to go againſt you by default.

I ſhall conſider theſe charges ſeparately; as they require, and will receive, very different puniſhments.—As to the aſſault, it is a matter of as ſerious and important conſideration as almoſt ever came before a Court of Juſtice. It was a cruel and wanton attack, made by a Gentleman in the land-ſervice, on an Officer of the navy.—It was the higheſt inſult offered by an inferior to his ſuperior, preceded by a variety of aggravating circumſtances. It was a quarrel which originated from incidents which happened during the time you was on board the ſhip Warrior, under the actual command of Sir James Wallace. This, therefore, is a caſe in which the diſcipline both of the army and navy is deeply concerned, and which will materially affect that ſubordination which neceſſarily is due from perſons under command to their commander, and which muſt be inviolably preſerved, to keep up any order or authority whatſoever.

The matters to be enquired into, are, the nature of the aſſault,—and the extenuations which have been offered on your part to mitigate the offence. Theſe have been of two ſorts: the provocation you received from Sir James Wallace, and the ſuppoſed laws of honour, by which you were induced to become the avenger of your own wrongs, in order to avoid perſonal diſgrace.—The falſe and chimerical notions of honour can receive no countenance, or even indulgence in this Court, as they are not only contrary to the laws of God and morality, but to the municipal laws of this and every civiliſed nation throughout the whole globe. But, though the ſubject is a delicate one, I ſhall briefly touch on this palliative of your conduct before I finiſh, and ſhall conſider you in the light of what is faſhionably, though untruely, ſtyled the Man of Honour.

As a military man, and ſubject to its diſcipline, you ought to know that it is an eſtabliſhed rule, during actual ſervice, that the inferior officer ought to be ſubmiſſive and obedient to the authority of his ſuperior, and muſt, without exception or reſerve, obey all his commands which reſpect the duty he is engaged in. I underſtand likewiſe, (and I have enquired of perſons of rank and knowledge in the military line) that after the ſervice is ended, it is generally conceived that the ſuperior is not perſonally anſwerable to his ſubordinate for any act which he has done in his character as commander;—and this for two reaſons:

Firſt, if it were otherwiſe, no public ſervice could be performed without the utmoſt hazard to the perſons who had the direction of it. For inſtance, can any general of an army, or admiral of a fleet, or even captain of a ſhip, go out on any expedition, without probably having under his command, one or more violent, wrong-headed, intemperate young men, who in their heat of blood may conſider a reaſonable order, or juſtifiable reſtraint, as a perſonal inſult; and may conſtrue a warm expreſſion, or deſerved reprimand, from the mouth of their commander, as ſuch an affront as that, on their return from the ſervice, they ſhall be obliged to purſue him through all created ſpace until they obtain ſatisfaction for the ſuppoſed injury? Sir James Wallace ſeems to ſtand pretty much in this ſituation; and, if the military etiquette allowed theſe extravagant ideas, I know few who would wiſh to be intruſted with a command.

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The ſecond reaſon is, there is another remedy at hand, which you may have without the leaſt loſs of honour, or ſhadow of imputation or tarniſh on your courage. The inferior has a right, if his ſuperior has miſbehaved himſelf in his command, to call him before a court-martial, and to have his conduct enquired into. This remedy you yourſelf applied for; and though Sir George Rodney did not, in that ſeaſon of action, think it adviſeable to give you a court-martial, yet he immediately ſo far redreſſed the grievance you complained of, as to remove you from under the command of Sir James Wallace, with whom you was not on good terms.

In weighing therefore the ſentence which is to be paſſed upon you, this Court have it ſtrongly impreſſed on their minds, that the ground of your reſentment againſt Sir James Wallace, was a ſuppoſed affront received from him whilſt under his command, and for which you have ever ſince continually purſued him with ſo much acrimonious and vindictive aſſiduity. If this ſupreme Court of Juſtice was, in the puniſhment to be inflicted on you, to omit the conſideration of this material part of your caſe, it might be properly objected to us, that we were relaxing the diſcipline both of the army and navy; and that the ſentence of the civil magiſtrate was ſubverſive of all ſubordination among the military.

In puniſhing therefore a delinquent under your deſcription, regard muſt be had to the obedience of the whole military eſtabliſhment, and care taken *ne pars ſincera trahatur*; and this will be more neceſſary, as affidavits have been offered, and ſome read in Court, whereby your conduct as an officer has been endeavoured to be vindicated.

I ſhall now conſider the nature of the aſſault, which, as proved by Sir James Wallace on the trial, was a violent blow given with a cane, which cut through his hat and the leather of it, and ſtunned him, and ſo contuſed his head, that if it had been on the middle of it, it might probably have killed him. This evidence is likewiſe confirmed by the teſtimony of Mr. Farquhar the Surgeon. Was this the tap of a gentleman wanting only a vindication of his honour? Or was it not rather an outrageous act of violence, committed by a perſon whoſe paſſion had intirely got the better of his reaſon, and who had loſt all ſenſe of principle and humanity? This barbarous and brutal behaviour was preceded by thoſe genteel and polite expreſſions, *You ſcoundrel, Sir James Wallace!* though at that time Sir James Wallace had given you not the leaſt provocation. On this part of the caſe, I conſider only the ſpecific identical aſſault of which you was indicted, and have been convicted. When I come to your extenuation of the fact, I ſhall have an opportunity of making my remarks on every thing which went before it.

Conſidering the aſſault ſimply by itſelf,—It was a moſt notorious violation of the peace. A blow given in the broad day, in the open ſtreets, by one gentleman to another; it was a caning, which, according to the laws of honour, no ſubmiſſion can expiate. It was a caning, with ſuch marks of deliberate malice, that, if death had enſued, it would have been conſtrued to be murder. The dark ſide of this black tranſaction is but too viſible.

Can it be juſtified? No. Your Counſel did not pretend to do it, till ſome of them, from a meritorious zeal for your ſervice, loſt themſelves in the wilds of chivalry, and adopted the romantic notions of knights errant.

Can any apology be made for it? This brings me to examine what has been offered in extenuation: and this involves me in ſuch a quantity of affidavits, loaded with ſo many contradictions and falſehoods, that I am afraid it will be with difficulty that I ſhall extricate myſelf out of them. I will reduce the ſubſtance of them to ſeveral heads; and, if I can, ſhall endeavour to draw truth out of obſcurity.

I paſs over the affray between Sir James Wallace and Mr. Murphy, which happened in Auguſt 1781, in the account of which you are pointedly contradicted both by Sir James Wallace and Mr Sleigh, and to a degree by Mr. Murphy's letter dated in September. Indeed, I ſaw no reaſon for the introduction of this epiſode, unleſs it was to raiſe an idea that Sir James Wallace had entertained ſome prejudice againſt you before you came on board. But how is this ſupported? When you came on board his ſhip at Portſmouth, you obtained leave from him to go to London for only three days; and, though you ſtaid fifteen, Sir James Wallace winked at your miſconduct. You mention, in your affidavit, your anxiety to get rid of a man whoſe conduct had not impreſſed you with any favorable ſentiments towards him, and that you in vain ſought an exchange of ſituation with ſome other officer. But what ground is there

there for this ſuggeſtion? Lieutenant Spry ſwears that you frequently expreſſed to him, how exceedingly happy you was in having been ordered on board Sir James Wallace's ſhip, and that you had the higheſt opinion of, and reſpect for him, and would not on any conſideration have miſſed the chance of being on board his ſhip. The ſubſequent voyage ſhews that there was no animoſity ſubſiſting between you till your arrival at the Madeiras; and though you ſuggeſt, by your affidavit, ſeveral inſtances of inſult, outrage, and unofficer-like behaviour, during the voyage from London to Jamaica, yet you ſpecify none till you come to the Madeiras.

Your complaints afterwards may be reduced to three heads.

Firſt, Sir James Wallace's not introducing you to the Governor of Madeira.

Second, His behaviour towards you, relative to the diſturbance and blowing out the lights in the ward-room, on the 24th of April.

Third, His prohibition which followed, the next day, that you ſhould not walk on the ſame ſide of the deck with him.

As to the firſt, not introducing you to the Governor of Madeira, What does your commanding officer Mr. Varlo ſay? That you had no right to complain of this, as none of the other officers belonging to the ſhip had been introduced to the Governor. Sir James Wallace introduced you with the reſt of the officers to the Britiſh Conſul, Mr. Murray, where you dined. But what was your behaviour there? You artfully obtained leave from Sir James Wallace, contrary to the general orders given out, and which you murmured at, that all the officers ſhould come on board at night, to ſtay at the Madeiras that evening. How was Sir James's civility returned? You and Lieutenant Markett, the companion of your frolicks, behaved exceedingly ill at the comedy that evening, by refuſing to pull off your hats in the preſence of the Governor; and afterwards, being intoxicated, engaged in ſeveral broils and diſturbances, which drew upon you the reſentment of the inhabitants: in fact, you diſgraced your nation, and never returned to the ſhip till the Monday following, after three days abſence, though your licence was only for the Saturday night. It does not appear that Sir James Wallace would have even taken notice of this diſobedience and diſorderly behaviour, if it had not been for your ironical and impertinent note ſent to him, in the name of yourſelf and Lieutenant Markett, in which you thank him, ſneeringly, for his polite introduction of you to the Governor of Madeira, and acknowledge yourſelves indebted to him for the civilities and polite treatment which you had received from the inhabitants, which your own ill conduct drew upon yourſelves. When he came on board his veſſel, he ſent for you into his cabin, and gave you a ſlight reprimand, in the preſence of your Major, Mr. Varlo, and Lieutenant Spry; and as you made no apology for your improper conduct, nor ſeemed to be ſenſible of your fault, he never aſked you to dine at his table again. I believe very few commanders, being thus ill treated, would have acted otherwiſe.

When Sir James Wallace conſulted your commanding officer, Major Varlo, on the ſubject of this letter, he expreſſed his ſurpriſe at it, and ſaid he could not conſider it in any other light than an intended inſult.

Theſe are the ſentiments of your own commanding officer on this ſubject; and you are the more blameable, as you ſeduced Lieutenant Markett to join with you in this affront offered to the captain of his ſhip. The natural obſervation here is, that your diſobedience of orders and inſolent comportment had moſt juſtly drawn upon you the reſentment of Sir James Wallace. And as this fracas happened before the Warrior left the Madeiras, I don't wonder that afterward Sir James Wallace ſhould be particularly attentive to your conduct.

In your voyage from the Madeiras to Jamaica, on the 24th of April, between ten and eleven at night, a great noiſe and diſturbance was heard in the ward-room, and a meſſage was ſent up by you to Sir James Wallace, to know if he had ordered the lights to be put out, which he had not: and on an enquiry made by Mr. Spry the Lieutenant, he reported that you had been making a diſturbance, and prevented Mr. Stephenſon from ſleeping, who was to be on the next watch: That a challenge had paſſed betwen you; on which Sir James Wallace ſent for you to his cabin, and, in the preſence of Major Varlo, told you that you was a troubleſome man. It was a ſentiment, which, after the experience he had had of your conduct, he might naturally entertain, and which Major Varlo does not ſeem to diſ-

approve

approve of; for in his affidavit he only ſays, that you went out of the cabin, muttering ſomething to yourſelf. In this buſineſs of ordering the candles in the ward-room to be put out, Sir James Wallace was totally unconcerned; and as to what you ſwear in your affidavit, that Lieutenant Stephenſon came from Sir James Wallace's cabin into the ward-room ſeemingly intoxicated with liquor, you are contradicted by Lieutenant Spry, Sir James Wallace, and others. If ſuch a ſlight buſineſs as this, at a late hour in the evening, on a diſturbance happening on board a ſhip, is to be an excuſe for that envenomed malignity which has rankled in your breaſt ever ſince, I know not how a Captain of a Ship can with ſafety do his duty.

Your laſt cauſe of complaint is what happened on the day following, the 25th of April, when you were prohibited to walk on the ſame ſide of the deck with Sir James Wallace. The facts are differently related in the ſeveral affidavits. If, after ſuch behaviour the preceding evening, you came up to Sir James Wallace with an aſſuming air and geſture, and paſſed him in a manner that appeared to convey an intended inſult to him, or intention to provoke him, then Sir James's orders are not to be found fault with. The captain of a ſhip muſt ſupport his own authority; and peculiar and aſſuming geſtures are not leſs contemptuous than words. If the account, given by yourſelf and Lieutenant Monke, of the clenched fiſt and angry appearance of Sir James Wallace on deck, are to be credited, Sir James Wallace's conduct is not entirely free from reprehenſion: but the account thus given is contradicted by many other affidavits; and on your making your complaint immediately to Major Vario, and ſaying that you had been ill uſed, and muſt conſider yourſelf as a priſoner, he does not liſten to it, or interfere in the affair, or give you his protection or aſſiſtance, as he would have done if he thought you had been treated with any inſolence or abuſe. But taking this buſineſs in the ſtrongeſt light, theſe little peccadillos or ſquabbles, between officers engaged in the ſervice of their country, are not ſufficient apologies for that rancorous hatred and malice with which you have ſought the life of Sir James Wallace. I muſt repeat again and again, that if a conduct of this ſort, from an inferior to his ſuperior, was to be endured, and not ſeverely puniſhed, the ſervice of this country could not be carried on, as the commander in chief would be in more danger from his own officers than from the enemy. And now I come to the ſeveral challenges, or pretended challenges, which you have given to Sir James Wallace, in order to obtain ſatisfaction for theſe ſuppoſed affronts. If true, I don't ſee how they can be conſidered as extenuations of your crime; they appear to me as aggravations.

Your firſt accoſting Sir James Wallace at Jamaica, the 15th of May 1782, I conſider as no challenge, but as an opportunity you gave Sir James Wallace of explaining himſelf.

Your ſecond application to him, on the evening of the 20th of July, is a very equivocal buſineſs. You would wiſh, as it ſeems, to have both theſe interviews conſidered as challenges; and admitting they were ſo, Sir James Wallace, as a good officer, was not in honour under any neceſſity to accept them. As he was then in actual ſervice, his duty to his Sovereign ſuperſeded every other obligation; and his life, in which the public was intereſted during the heat of war, was not to be ſacrificed to private reſentment. I take this to be the law martial univerſally acknowledged, and to which, if an officer adheres, he is in no danger of falling into diſgrace with his corps. Beſides that, theſe were challenges given by an inferior officer to his ſuperior, to whom his Majeſty had intruſted the command of one of his ſhips of war, then engaged in a perilous ſervice.

At Bath no written challenge was ſent to Sir James Wallace; no gentleman waited on him to explain your intention in coming there. Mr. Abbot intimated to you Sir James Wallace's objections to the propriety of your conduct, and what, as a gentleman, he expected from you. And on your return to town, you would have us underſtand that the Earl of Cork waited on Sir James Wallace to know his determination, but that he could not ſee him, and, as you ſay in your libel, you ſuppoſe he was cloſeted. All this is denied by Lord Cork, who ſays you made an apology to him for theſe falſe aſſeverations. What followed afterwards was the cataſtrophe of the ſixth of February, for which you are now to receive the judgment of this Court.

And now I am come to that fairy ground on which I mean to examine your conduct as a Man of Honour. There are ſome eſtabliſhed rules allowed and approved in the imaginary Court of Honour, though there is no certain

code which can be depended on; and therefore the diſcuſſion of this ſubject will not at all interfere with the deciſion of this Court, but is intended to obviate any prejudices which may ariſe in the minds of the Public, from the arguments of the Counſel. Let it be underſtood, at the ſame time, that what I advance on this head, is not intended as a vindication of Sir James Wallace's courage, which has never yet been doubted, either in public or private life.—A man of age and experience, and acknowledged courage, ought not raſhly to yield to the preſumptuous importunities of a young man, who would provoke him into the field, to hazard a life which is ſo valuable to the public.

Your ſecond aſſailment of Sir James Wallace, at Port-Royal, was made in a very abrupt manner; when, inſtead of communicating your intentions to him, either by letter or by a friend, in the evening you ruſh out of a negro hut, to offer an inſult to your ſuperior.

But, what was your conduct at Bath? Two anonymous meſſages, ſent by the waiter of the White Hart, as a ſnare laid to draw your adverſary, unarmed, into a private room, where you yourſelf was armed; no option given him as to time, weapons, place, or friend. All theſe punctilios were neglected, though your journey to Bath was premeditated, and you had taken advice before you left town. All this rude behaviour of yours was followed by two moſt abuſive notes, and a kind of invitation the next morning to Captain Webber to come and ſee you cudgel Sir James Wallace. You would have us underſtand, and ſo gave out at Bath, that you in Milſom-Street ſhook your cane over Sir James Wallace. I do not believe that you did; but if I give you credit for this ſhaking of your cane, afterwards the affair ought to have been at an end, and, as you obſerve yourſelf, your honour was ſufficiently vindicated: but you ſay your converſation with Mr. Abbot, and Sir James Wallace's Appeal to the Public, excited you to freſh acts of violence.

I reprobate and greatly condemn Sir James Wallace's publication in the Morning-Herald of the 20th; it was highly improper: he was probably provoked to it by the paragraph which appeared in the ſame paper of the 17th, which he had reaſon to think yours, as you had, in your letter at Bath, threatened to expoſe him in the public prints. You have now, on your oath, denied your being the author of, or privy to that publication.

And this brings me to the laſt ſcene of this detail, which ended in the ſame rough and ungentleman-like manner in which it began. And here I ſhall obſerve that this affair had reſted and cooled from the end of December, until the 6th of February; ſo that you had time for conſideration how to act with propriety. If you thought your ſhaking your cane over Sir James Wallace, at Bath, not ſufficient, as a man whoſe conduct was to be ſanctified by the rules of honour; you might, when you met him in the ſtreets, have flung your glove in his face, or given him a touch on the arm, with a declaration, that you meant to ſtrike him: inſtead of which, you, in a moſt barbarous and ungentleman-like manner, ſtruck him in the cruel way I have before deſcribed. And after this, you are raſh enough, at the end of your affidavit, to ſwear that you was not induced to ſtrike Sir James Wallace, either through malice or ill-will, but only in defence of your reputation; and then conclude with ſaying, it was not your intention to do him the leaſt bodily harm.

The Court, therefore, in abhorrence of the whole of your conduct, and as an example to deter others from being guilty of the ſame acts of violence, malice, and vindictiveneſs; and to diſcountenance, as far as is in our power, thoſe falſe notions of honour, which may have led you to the commiſſion of theſe enormities, do pronounce upon you this judgment:

"That you, Charles Bourne, be impriſoned in the cuſtody of the Marſhal of this Court, for two years, and that you give ſecurity for your good behaviour, for the ſpace of ſeven years; yourſelf in 1000l. and two ſufficient ſureties in 500l. each; and that you continue in the cuſtody of the Marſhal, until you have given ſuch ſecurity.

"As to the publication of the libel of the 23d of December, though it contains the groſſeſt ſcandals; ſuch as calling Sir James Wallace a ſcoundrel, coward, lyar, and other opprobrious names; yet, as it is, to a degree, only an anſwer to a prior publication of Sir James Wallace's, in his injudicious Appeal to the Public, where he ſpeaks of your vain boaſtings, and falſe aſſertions; the mild judgment of the Court is, That for this offence, you pay a fine to our Sovereign Lord the King, of 50l. and that you be further impriſoned until your fine is paid."

APPENDIX.

In the King's-Bench.

The King, on the Proſecution of Sir James Wallace, Knt. againſt Charles Bourne, for a Libel.

Affidavits on the Part of the Defendant.

CHARLES BOURNE, Firſt Lieutenant in the Portſmouth Diviſion of his Majeſty's Marine Forces, the Defendant above named, maketh oath, That his firſt perſonal knowledge of Sir James Wallace was about the month of Auguſt, 1781, when this deponent was at Whitehall, under chirurgical care for the cure of wounds received on ſervice in America; that Sir James Wallace, together with a particular friend of this deponent, with two gentlemen, entered the apartment in which deponent then was; that the ſaid Sir James Wallace's face was bloody, and his cloaths torn, and that he and the friend of this deponent bore evident marks of having had a violent rencontre; that, upon attempting to interfere to prevent further miſchief, the ſaid Sir James Wallace flew at deponent, and, ſeizing him by the breaſt, demanded to know if he would fight, and take the quarrel upon himſelf; but this deponent, being in a very weak ſtate of body, with his arm in a ſling, and having as little inclination as ability for an affray, declined it. And this deponent further ſaith, that the next morning Mr. Sleigh (whom this deponent underſtands to be brother-in-law to the ſaid Sir James Wallace) waited upon this deponent, and ſeemed much diſtreſſed about the conſequences that might attend Sir James Wallace's meeting with the gentleman with whom he had the quarrel aforeſaid, and intreated this deponent to interfere as he had before done, to prevent it. And this deponent ſaith, that, being pleaſed with this further opportunity of interfering in like manner to prevent any further difference between the ſaid parties, he, this deponent, accordingly applied to his friend, and urged every argument in his power to prevent ſuch conſequences, and with very great difficulty prevailed on him to reſt contented with what he had done. And this deponent ſaith, that, a few months afterwards, he thought himſelf ſufficiently recovered to embark again on ſervice, and join his diviſion at Portſmouth, when his Majeſty's ſhip the Warrior, commanded by the ſaid Sir James Wallace, demanded a detachment of marines, and this deponent was ordered on board her. And this deponent ſaith, that, being anxious to get clear of a man whoſe conduct had not impreſſed this deponent with any favourable ſentiments towards him, he, this deponent, endeavoured to avail himſelf of the privilege frequently given to officers of changing duty, or ſhips with each other; but this deponent ſaith, that, though there were ſeveral officers at quarters, who wiſhed to go to ſea, yet he could not prevail on any one officer to exchange with him. And this deponent ſaith, that, during the voyage of the ſaid ſhip Warrior from England to Jamaica, he experienced from the ſaid Sir James Wallace ſeveral inſtances of inſult, outrage, and unofficer-like behaviour; particularly, on obſerving this deponent walking on the quarter-deck, he, the ſaid Sir James Wallace, would frequently come out of his cabin with his fiſts clinched, in a moſt menacing and provoking manner, driving this deponent from ſide to ſide of the ſaid ſhip, with an intention, as deponent firmly believes, to irritate him to ſome act or expreſſion for which he might be brought to a Court-Martial; which deponent being aware of, ſuppreſſed his natural reſentment, and treated the ſaid Sir James Wallace with every reſpect due to a commanding officer. And this deponent further ſaith, that, ſome time before the ſaid ſhip Warrior's arrival at Jamaica, Mr. Stephenſon, one of the Lieutenants of the ſhip, came ſeemingly intoxicated with liquor from Sir James Wallace's cabin into the ward room, and behaved with great rudeneſs and impropriety to the company, but more particularly to this

deponent (which deponent verily believes was at the inſtance of the ſaid Sir James Wallace): the ſaid Lieutenant Stephenſon then blowing out the candles, ordered the ſervants, in an official manner, not to light them again. And this deponent further ſaith, that the gentlemen of the ward-room, finding themſelves in the dark, and likely to remain ſo, unleſs redreſſed by ſuperior power, ſent their reſpectful compliments to Sir James Wallace, begged to inform him that the candles were blown out by Mr. Stephenſon, and not ſuffered to be relighted; and that if it was not Sir James's wiſh or deſire they ſhould be ſo, requeſted he would order them to be lighted again. And this deponent ſaith, that, immediately after the ſaid meſſage was ſent him, he, the ſaid Sir James Wallace, ſent for this deponent to his cabin, where he was ſitting with the Captain of Marines, Maſter, and Surgeon; and, upon this deponent's entering his cabin, Sir James Wallace advanced towards this deponent, and demanded of this deponent what meſſage it was that was ſent him; and this deponent ſaith, that he bowed, and repeated the meſſage that was ſent by the gentlemen of the ward-room, viz. Their reſpectful compliments, &c. And this deponent ſaith, that the ſaid Sir James Wallace deſired this deponent to get away; that he would ſay nothing to him at that time, but that he would take another opportunity; that this deponent ſhould hear from him: this deponent then replied to him, that he ſhould be happy in the honour, at any time, to hear what he had to ſay, and retired. And this deponent ſaith, that the next morning, Lieutenant Stephenſon, repenting of his miſconduct, requeſted that the Gentlemen of the Ward-room would attend while he declared his concern for the whole of his behaviour, and particularly that part of it which related to this deponent, declaring that he was drunk, that he was very ſorry for what had happened, and intreated this deponent's pardon and forgiveneſs. And this deponent further ſaith, that, on the 24th of April, 1782, the ſaid Sir James Wallace ſeeing this deponent on the quarter-deck, came running out of his cabin in a violent manner, with his fiſts clinched to this deponent's face, muttering the word ſcoundrel: but this deponent, really thinking the ſaid Sir James Wallace at that inſtant in a ſtate of madneſs, turned away his head, and went to the other ſide of the deck, and walked with Lieutenant Monke, the officer of the watch; the ſaid Sir James Wallace then walked ſeveral times backwards and forwards, in a moſt violent rage, and then went into his cabin; and ſhortly returning, called loudly for Lieutenant Spry to attend to his public orders, which were, That they who ever treated him with diſreſpect, ſhould never walk on the ſame ſide of the quarter-deck with him; therefore, Mr. Bourne, (addreſſing himſelf to this deponent,) you muſt ever walk on the oppoſite ſide, or words to that effect: upon which this deponent replied, he was confident he did not come within that deſcription, and that his conduct to Sir James Wallace had ever been the reverſe; whereupon the ſaid Sir James Wallace, in an inſulting manner, aſked this deponent if he dared to diſpute his orders, to which this deponent replied, "Certainly not;" that he was too old a ſoldier to diſpute an order, but that, if he perſevered in it, he, this deponent, muſt conſider himſelf a priſoner, for that, under ſuch unprecedented inſtances of public inſult and diſgrace, he could not do his duty as an officer; and requeſted the ſaid Sir James Wallace, that, if any part of his conduct was exceptionable, he would confine him in a regular manner, that he might have an opportunity of clearing himſelf; inſtead of which, the ſaid Sir James Wallace peremptorily charged this deponent to attend to his orders. And this deponent further ſaith, that, for two or three weeks after, the time they were at ſea, and even when they arrived at Port Royal, the ſaid Sir James Wallace did not revoke this order; that deponent, upon the ſhip's arrival there, wrote a letter to the naval Commander in Chief, the tenor of which was ſunk in the Hector, but, as near as this deponent can recollect, it was to the following purport, viz. complaining of the aforeſaid order, and ſoliciting the Admiral's protection, and requeſting him to grant an enquiry into deponent's conduct, how far he had treated Sir James Wallace with diſreſpect; and into his authority for treating deponent in ſuch an unofficer-like and ungentleman-like a manner: and alſo requeſting, that the Admiral would order a Court-Martial on Sir James Wallace for public inſult and oppreſſion, and a breach of the 5th article of the printed inſtructions, in attempting to puniſh deponent. And this deponent further ſaith, that, inſtead of complying with this deponent's requeſt, the Commander

Commander in Chief, about 9 or 10 days afterwards, ſent an order to diſcharge this deponent from the Warrior into L'Hector, a French prize. And this deponent further ſaith, ſome ſhort time afterwards this deponent accidentally meeting the ſaid Sir James Wallace on ſhore at Port Royal aforeſaid, in company with Major Varlo, of the Marines, he this deponent gave Sir James Wallace an opportunity of explaining himſelf, which he declined, and walked quietly away from deponent to his boat. And this deponent further ſaith, that ſome ſhort time afterwards this deponent again met the ſaid Sir James Wallace on ſhore at Port Royal aforeſaid, in company with a Captain of the Navy, and this Deponent again offered himſelf to the ſaid Sir James Wallace, who declined coming to an eclairciſſement, but promiſed deponent that he the ſaid Sir James Wallace would do his duty, and that deponent ſhould hear from him. And this deponent further ſaith, that, notwithſtanding the ſaid promiſe, he never heard from the ſaid Sir James Wallace, though the ſaid Sir James Wallace and this deponent remained on the ſaid iſland ſome weeks afterwards; but, inſtead of receiving any apology, was informed by ſeveral officers, that the ſaid Sir James Wallace continued to treat deponent's name and character with abuſe and diſreſpect. And this deponent further ſaith, that, on his arrival in Plymouth from Newfoundland, he thought it a duty indiſpenſable to his character as an officer and a gentleman, to come up to London, to obtain an explanation from the ſaid Sir James Wallace for ſuch groſs and injurious conduct; and, having before been upon terms of intimacy and friendſhip with the Earl of Cork, he this deponent waited on his Lordſhip, and acquainted him with the various circumſtances of the ill-treatment he had met with from the aforeſaid Sir James Wallace. And this deponent further ſaith, that the ſaid Earl of Cork with readineſs and kindneſs offered to accompany this deponent as his friend to Bath, where the ſaid Sir James Wallace was ſaid to be at that time, which this deponent declined, having heard that Captain Webber, a gentleman for whom this deponent had the higheſt reſpect and eſteem, was then at Bath. And this deponent further ſaith, that, upon his arrival at Bath aforeſaid, he waited on the ſaid Captain Webber, and made him fully acquainted with the purport of his viſit to that city, the great confidence which this deponent had in Captain Webber's good ſenſe and conduct being deponent's ſtrongeſt motive for his application to that gentleman for advice, this deponent having reſolved to act in the whole of the buſineſs with the ſtricteſt propriety. And deponent further ſaith, that he in vain endeavoured to obtain an interview, but at length met the ſaid Sir James Wallace in the ſtreet at Bath aforeſaid, and, upon demanding ſuch conceſſions as he conceived his character required, the ſaid Sir James Wallace preſented a piſtol cocked at deponent's breaſt, declaring he would ſhoot him. And deponent further ſaith, that he expreſſed his warmeſt reſentment and ſurprize at ſuch conduct in the open ſtreet, and urged a more private meeting, which the ſaid Sir James Wallace abſolutely refuſed. And deponent ſaith, that he was informed and believes that the next morning the ſaid Sir James Wallace left Bath. And deponent further ſaith, that, in the evening of that day, a gentleman of the name of Abbot, accompanied by another gentleman, called upon deponent, and declared, that, if he had ſent a written challenge, Sir James Wallace would have met him; to which deponent anſwered, that, from the opinion he entertained of Sir James Wallace, he would not venture to give him poſſeſſion of ſuch a paper ſo offenſive to the laws of the country; to which the ſaid Mr. Abbot only replied by obſerving, that Sir James Wallace would ſtill come to an explanation, provided deponent would ſend a gentleman to him upon the buſineſs. And deponent further ſaith, that, upon hearing the latter declaration, he reſolved, upon his arrival in town, to call upon the Earl of Cork, acquaint him with the whole of the affair, and requeſt that his Lordſhip would call upon the ſaid Sir James Wallace upon the ſubject. And deponent further ſaith, that, before the laſt declaration of Mr. Abbot aforeſaid, he this deponent, conceiving that he had acted ſufficiently in the affair to vindicate his honour, determined to take no further ſtep whatſoever; but, in conſequence of what Mr. Abbot ſaid, he this deponent ſaith, that, on his arrival in London, he waited upon the ſaid Earl of Cork for the aforeſaid purpoſe, and that, with the greateſt readineſs and ſeeming kindneſs, he the ſaid Earl of Cork agreed to call upon the ſaid Sir James Wallace accordingly. And deponent further ſaith, that the ſaid Earl of

Cork

Cork afterwards informed him this deponent, that he could not ſee the ſaid Sir James Wallace, but had ſeveral times converſed with Mr. Sleigh, Sir James's relation and ſollicitor. And this deponent further ſaith, that he afterwards waited on the ſaid Earl of Cork, in company with Captains Deſborough and Hamilton, when the ſaid Earl of Cork declared, that he had again called at Sir James Wallace's, but could not obtain an interview with him, but that he had ſeen Mr. Sleigh, who informed him the ſaid Earl of Cork, that Sir James Wallace had written a letter of complaint againſt this deponent to the Lords of the Admiralty, and which his Lordſhip thought argued no great ſign of his intentions to meet this deponent; or he uſed words to that purport or effect. And this deponent further ſaith, that, after this converſation with the ſaid Earl of Cork, the deponent ſaw, in the Morning Herald, the following letter, ſigned by Sir James Wallace, viz.

Mr. Editor,

UPON my arrival in town yeſterday, I was informed that a publication had appeared in your paper of Monday laſt, caſting very pointed ſcandalous aſperſions on my character, of which, from ſome late tranſactions, I ſuppoſe Lieutenant Bourne, of the Marines, to be the author. The whole of Bourne's ungentlemanlike behaviour, which I have laid before the Admiralty, is too long for a newſpaper publication: I ſhall therefore only ſay, that he has never come once to the point, either at Jamaica, Bath, or London; and if he had, I can demonſtrate that I was prepared for him at each place, and might have prevented all his vain boaſtings and falſe aſſertions.

December 20th, 1782. JAMES WALLACE.

And this deponent moſt poſitively ſwears, that he neither wrote or publiſhed, or cauſed to be written or publiſhed, the article which appeared in the Morning Herald to which the ſaid Sir James Wallace alluded in the aforeſaid letter; neither did he then, nor does this deponent yet know any thing whatſoever of the author or publiſher of the ſame. And this deponent further ſaith, that, by the advice of all his friends which he conſulted upon the occaſion, and according to the dictates of his own ſenſe of honour and character, he thought it his indiſpenſable duty to publiſh the letter which appeared in the ſaid Morning Herald of the 22d of December, under this deponent's proper ſignature, for which deponent is to receive the judgment of this Honourable Court. And this deponent further moſt poſitively and ſolemnly ſaith, that he was not induced to publiſh the ſaid letters in the Morning Herald aforeſaid by any malice towards the ſaid Sir James Wallace; nor has this deponent, either in his prior or ſubſequent conduct in this buſineſs, been actuated by any other motives than the vindication of his own honour and reputation as a gentleman and an officer. And, laſtly, this deponent ſaith, that, having loſt almoſt every thing he was poſſeſſed of by the loſs of L'Hector, he this deponent, in order to enable him to bear the expence of the two proſecutions which are commenced againſt him by Sir James Wallace, has been obliged to grant an annuity upon a penſion this deponent receives from Government for wounds received in ſervice, and that nothing but the defence of his reputation could induce him to incumber the ſame.

CHARLES BOURNE.

Sworn at my houſe in Lincoln's-Inn-Fields, the 20th day of June, 1783, before

E. WILLES.

GEORGE PARIS MONKE, late Fourth Lieutenant of his Majeſty's ſhip Warrior, commanded by Sir James Wallace, ſaith, That, ſometime about the latter end of April, 1782, this deponent was walking on the quarter deck of the ſaid ſhip Warrior, with the above defendant Lieutenant Charles Bourne, when the ſaid Sir James Wallace, ſeeing the ſaid defendant upon the quarter-deck, came running out upon him from his cabin in a very violent manner, with his fiſts clinched to his face, his brows knit, and his eyes (as it were) darting fire; in ſhort, betraying every ſymptom of inſanity: and that he the ſaid Sir James Wallace then gave out in public orders to Mr. Spry, the firſt Lieutenant, "That no "perſon who had treated him with diſreſpect "ſhould walk on the ſame ſide of the quarter-"deck with him;" at the ſame time turning to the ſaid Charles Bourne, in a very uncivil manner, addreſſed himſelf to him nearly in the following words, "Therefore, Mr. Bourne,

"you

" you muſt ever walk on the other ſide." And this deponent further ſaith, that he hath ſeveral times ſeen the ſaid Sir James Wallace treat the ſaid Charles Bourne (in this deponent's opinion and judgment) in a moſt unofficer-like, infamous, and inſulting manner, with a view, as this deponent ever conceived, to irritate the ſaid Charles Bourne to commit ſome act of violence againſt him, in order to take the advantage of trying him by a Court-Martial, to ſatisfy his implacable and unjuſt reſentment. And this deponent further ſaith, that he is alſo of opinion, that no officer, under the circumſtances of ſuch public diſgrace and inſult, could, with any degree of propriety or honour, do his duty. And this deponent further ſaith, that he hath ſtrictly obſerved the conduct of the ſaid Charles Bourne while ſerving on board the Warrior, and always found it to be that of a gentleman, a ſober, diligent, and gallant officer, and a man of honour, not in the leaſt inclined to be quarrelſome or diſreſpectful, either to Sir James Wallace, or any other of the officers: on the contrary, this deponent ſaith, that the conduct of Sir James Wallace towards the ſaid Charles Bourne was, in general, in the higheſt degree tyrannical and oppreſſive, and ſuch as this deponent verily believes none but a man out of his ſenſes or inebriated with liquor could have been guilty of. And this deponent further ſaith, that, ſoon after the Warrior arrived at Port Royal, Jamaica, this deponent, as commanding officer (in the abſence of the ſaid Sir James Wallace, and the firſt, ſecond, and third Lieutenants), received a letter addreſſed to Sir James Wallace on his Majeſty's ſervice from Admiral Sir George Bridges Rodney, incloſing one from the ſaid Lieutenant Bourne, repreſenting the order of Sir James Wallace above alluded to, that he ſhould not walk on the ſame ſide of the quarter-deck with him, and requeſting, under ſuch circumſtances of public inſult and diſgrace, the ſaid Sir George Rodney would pleaſe to grant an enquiry into his the ſaid Charles Bourne's conduct, how far he had treated Sir James Wallace with diſreſpect, and alſo requeſting that he would order a Court-Martial on Sir James Wallace for public inſult and oppreſſion, and a breach of the 12th and 13th Articles of the printed inſtructions, in order to free him the ſaid Charles Bourne from his diſgraceful ſituation, which letter and incloſure this deponent delivered to the ſaid Sir James Wallace on his coming on board.

G. P. MONKE,
Late Fourth Lieutenant of the Warrior.

Sworn at Weſtminſter Hall, the
5th June, 1783, before me,
F. BULLER.

AUGUSTUS MARKETT, late Third Lieutenant of his Majeſty's ſhip Warrior, maketh oath, That his firſt knowledge of the ſaid Charles Bourne was in November, 1781, when he was embarked as Lieutenant of Marines on board his Majeſty's ſaid ſhip Warrior: and this deponent ſaith, that he was inſtantly ſtruck with the eaſy, polite, and gentleman-like addreſs of the ſaid Charles Bourne, which pointed him out to this deponent as a very eligible and deſirable acquaintance, and led this deponent to watch moſt attentively over thoſe parts of his conduct that might fall under his obſervation, that if, upon the ſtricteſt ſcrutiny, this deponent ſhould find him ſo perfectly the gentleman his appearance ſo expreſſively beſpoke him, deponent might, by taking him as a model, and paying a minute attention to that happy manner of behaviour which ſo eminently diſtinguiſhed him, in time gain his eſteem, and then his friendſhip. And this deponent further ſaith, that in this he conceived himſelf amply rewarded, having conſtantly found in the ſaid Charles Bourne all that could be deſired in the gentleman and officer, his good breeding and amiableneſs of diſpoſition making him every one's favourite, and rendering it almoſt impoſſible for any man in his ſenſes to quarrel with him. And this deponent further ſaith, that, as an officer, the ſaid Charles Bourne conducted himſelf with alertneſs, aſſiduity, and the ſtricteſt attention to diſcipline; and that he was an example of ſobriety and good conduct to all under his care. And this deponent further ſaith, that he ſaw the ſaid Charles Bourne in the actions with the French Fleet on the memorable 9th and 12th of April, when he was quartered in a part of the ſhip much expoſed to the fire of the enemy; and this deponent ſaith, that the ſaid Charles Bourne, during the confuſion of the ſaid combats, acquitted himſelf with that heroic intrepidity, that cool, reſolute, and undaunted execution of duty, which ſo effectually increaſes the ardour of the men, and renders the officer the admiration of his pro-

 feſſion.

ſeſſion. And this deponent further ſaith, that he was preſent in Sir James Wallace's cabin on board the Warrior ſome time in the month of February, 1782, when the ſaid Sir James Wallace put the following Queſtion to him, in the preſence of ſeveral officers of the ſhip and his ſervants, viz. "Why, if you thought yourſelf aggrieved or affronted, did not you call me out?" or words to that effect. And this deponent ſaith, that the ſaid Charles Bourne was careful of ſaying any thing that a Court-Martial could take cognizance of, imagining the ſaid officers and people were placed there with a view to catch at any word that might be given in evidence againſt him. And this deponent further ſaith, that he verily believes the ſaid Charles Bourne to be moſt foreign to a quarrelſome diſpoſition; and, as an inſtance of his pacific and good temper, this deponent ſays, that he was preſent when one of the Warrior's officers, without the leaſt provocation on the part of the ſaid Charles Bourne, treated the ſaid Charles Bourne in a moſt abuſive and inſulting manner, and that the ſaid Charles Bourne, inſtead of reſenting the ſame in a manner that moſt people would have done, waited the return of the ſaid officer's reaſon, and with the greateſt good nature accepted an apology from him in the morning.

A. MARKETT.

Sworn at Guildhall, London, the 18th of June, 1783, before
MANSFIELD.

CHARLES GREEN, Eſq; Captain in his Majeſty's Marine Forces, maketh oath, and ſaith, That, ſome time in or about the month of July, in the year 1782, he this deponent, being then at Port Royal, in the iſland of Jamaica, and in company with Lieutenant Charles Bourne, defendant in this cauſe, the ſaid Charles Bourne communicated to this deponent ſeveral particulars of a ſeries of ill treatment which he declared he had received from Sir James Wallace, commander of his Majeſty's ſhip the Warrior, during the voyage from Portſmouth to the iſland of Jamaica aforeſaid; that the ſaid Charles Bourne, at the ſame time, expreſſed a very high ſenſe of the ſaid injurious treatment, and declared, with becoming warmth and energy, that he was reſolved to obtain ample atonement from the ſaid Sir James Wallace for his ſaid conduct: that the ſaid Charles Bourne further declared, that the ſaid Sir James Wallace, having before declined that kind of explanation which, as a gentleman and an officer, he the ſaid Charles Bourne conceived he had a right to demand and expect, he was determined to avail himſelf of the firſt opportunity of doing that public juſtice to his character which the public notoriety of the caſe demanded, by obliging the ſaid Sir James Wallace to come to the point at once, or words to that effect; but that, if the ſaid Sir James Wallace could not be prevailed upon to do juſtice in that way, he the ſaid Charles Bourne was reſolved to cane him, or chaſtiſe him in ſome manner equally ignominious, as a paltroon and coward deſerved. And this deponent further ſaith, that, in a few minutes after this converſation, the ſaid Sir James Wallace, together with Captain Fiſher, of the Le Caton, accidentally appeared on the oppoſite ſide of the way, near the Hoſpital, and being obſerved, the ſaid Charles Bourne immediately broke from deponent, ſaying that the "buſineſs ſhould then be ſettled" (or words to that effect), and, croſſing the way, ſtopped the ſaid Sir James Wallace. Deponent further ſaith, that an altercation between the ſaid parties (the whole of which he could not diſtinctly hear) then took place; that the ſaid Charles Bourne, laying his hand upon his ſword, declared, in the hearing of deponent, that he expected Sir James would then ſettle the matter like a gentleman, or words to the ſame purport, but that Sir James Wallace, who was alſo armed with a ſmall ſword, ſeemed unwilling to accept the challenge, notwithſtanding the ſpirited and indignant manner in which the ſaid Charles Bourne treated him. And this deponent further ſaith, that, throughout the whole of the ſaid tranſaction, he the ſaid Charles Bourne, in the opinion of this deponent, conducted himſelf entirely as became a gentleman and an officer, whoſe honour had been injured, and whoſe feelings had been exquiſitely wounded by illiberal and diſgraceful treatment.

CHARLES GREEN.

Sworn at Chatham, in the county of Kent, this 29th day of May, 1783, before me,
J. SIMMONS,
A Commiſſioner, &c.

JOHN

JOHN WEBBER, Eſq; a Captain in his Majeſty's Marine Forces, maketh oath, and ſaith, That, in or about the month of December, 1782, he this deponent, being on the recruiting ſervice at Bath, was called on by Lieutenant Charles Bourne, the defendant above named, who informed this deponent that he had come to Bath in order to ſee Sir James Wallace, from whom he ſaid he received the groſſeſt inſults whilſt under his command on board the Warrior, and declared his intention of obliging the ſaid Sir James Wallace to come to that explanation which as a gentleman and an officer his feelings could not diſpenſe with: and the ſaid Lieutenant Bourne, ſeeming to wiſh to act with the ſtricteſt propriety, ſolicited this deponent's advice, and requeſted this deponent would carry a meſſage to Sir James Wallace, demanding a meeting for the purpoſe aforeſaid. And this deponent ſaith, that he thereupon adviſed the ſaid Charles Bourne to return to his inn, and ſend a meſſage to Sir James Wallace from thence, and in caſe the ſaid Sir James Wallace ſhould not call or ſend to him, he this deponent would accompany him as his friend, or words to that effect. And this deponent further ſaith, that ſoon afterwards the ſaid Charles Bourne returned to this deponent, and acquainted him that he had ſent ſeveral meſſages, deſiring to ſee the ſaid Sir James Wallace, but without effect; whereupon the ſaid Charles Bourne, in the preſence and by the concurrence of this deponent, wrote to the ſaid Sir James Wallace a note to the following effect, viz. Mr. Bourne acquaints Sir James Wallace, that, if he perſeveres in refuſing to ſee him, it will confirm the opinion he has long entertained, that Sir James Wallace is deſtitute of every principle of honour, and every idea of a gentleman: but the ſaid Sir James Wallace ſtill declining to ſee the ſaid Charles Bourne, he then requeſted the further advice of this deponent how to conduct himſelf. And this deponent ſaith, that, never having known a gentleman under ſuch circumſtances, he this deponent was at a loſs how to adviſe in a caſe of ſo delicate and ſerious a nature, but recollecting that Lieutenant Colonel Heathcote, of the Marines, was then at Bath, he this deponent acquainted him with the circumſtances above mentioned, and requeſted his advice; but the ſaid Colonel Heathcote declared he was as much at a loſs as this deponent could be. And this deponent further ſaith, that, finding in the conduct of the ſaid Charles Bourne, during the courſe of their ſeveral meetings and converſations upon this occaſion, ſuch a diſpoſition as he this deponent conceived to be ſpirited and proper as an officer and a gentleman, he this deponent and the ſaid Colonel Heathcote determined to leave the ſubſequent conduct of the ſaid Charles Bourne entirely to the regulation of his own judgment. And this deponent further ſaith, that, the ſaid Charles Bourne immediately ſaid he thought it incumbent on him to cane the ſaid Sir James Wallace, and accordingly went to the ſeveral public places where the ſaid Sir James Wallace was ſaid to frequent for that purpoſe; but the ſaid Sir James Wallace was not to be met with on that day. On the morning following, between 12 and 1 o'clock, this deponent and the ſaid Charles Bourne went to the Pump-room, and were informed that the ſaid Sir James Wallace had juſt been there, had paid for his water, and was ſetting off for London, which determined the ſaid Charles Bourne to go to the ſaid Sir James Wallace's houſe (which, on account of ladies which were ſaid to be there with him, the ſaid Charles Bourne had before that time refrained from doing); that, immediately after, this deponent being in company with Mr. Davis, Agent Victualler of Gibraltar, ſaw the ſaid Sir James Wallace walking on the oppoſite ſide of the way, and the ſaid Charles Bourne at the ſame time approaching him. And this deponent ſaith, that he was not near enough to hear the converſation that paſſed between the ſaid parties, but that he ſaw the ſaid Sir James Wallace inſtantly draw a piſtol from his pocket, which he preſented to the breaſt of the ſaid Charles Bourne, whoſe then geſtures ſeemed to menace and threaten the ſaid Sir James Wallace with the conſequence of his reſentment, at the ſame time ſhaking his cane or ſtick at the ſaid Sir James Wallace, and they ſoon after parted. And this deponent further ſaith, the conduct of the ſaid Charles Bourne towards Sir James Wallace at Bath was, in his opinion, extremely proper, and ſuch as his ſituation rendered abſolutely neceſſary. And this deponent further ſaith, that in this opinion of the conduct of the ſaid Charles Bourne, he this deponent had the concurrence and approbation of the above-mentioned Colonel Heathcote,

cote, who is a gentleman of the ſtricteſt honour, and beſt judgment.

JOHN WEBBER.

Sworn at Weſtminſter-Hall, the 5th June, 1783.
F. BULLER.

LAURENCE DESBOROUGH, Eſq; and JAMES HAMILTON, Eſq; Captains of the Portſmouth Diviſion of Marines, make oath, and ſay, and firſt this deponent Laurence Deſborough for himſelf ſaith, That, at the requeſt of the above defendant Charles Bourne, he accompanied him ſome time about the middle of December laſt to the lodgings of the Earl of Cork, in Groſvenor-ſtreet, who, the ſaid Charles Bourne acquainted this deponent, had moſt generouſly intereſted himſelf in his affair with Sir James Wallace, and had undertaken to carry a meſſage to the ſaid Sir James Wallace, demanding an immediate meeting for the purpoſe of giving the ſaid Sir James Wallace an opportunity of making a proper apology to the ſaid Charles Bourne, or of giving him ſatisfaction in the uſual manner amongſt military men. And this deponent further ſaith, that at Lord Cork's houſe they were acquainted by the ſervant, that his Lordſhip, after waiting ſome time for Mr. Bourne, was gone out, but had left a note for Mr. Bourne, which note was to acquaint him that his Lordſhip had not been able to effect an interview with Sir James Wallace, that he ſhould be at home at 4 o'clock that afternoon, and would be glad to ſee him. And theſe deponents, Laurence Deſborough, and James Hamilton, ſay, that the next morning they theſe deponents accompanied the ſaid Charles Bourne to the lodgings of the ſaid Earl of Cork, and, after the uſual ceremony of introducing theſe deponents to his Lordſhip, the converſation immediately turned upon the reſult of the ſaid meſſage, when the ſaid Earl of Cork acquainted the ſaid Charles Bourne, that he had again called at Sir James Wallace's houſe, but that he could not ſee him, as he was ſaid to be out of town, or words to that effect; but his Lordſhip obſerved that he had ſeen Mr. Sleigh (who, theſe deponents are informed, is Sir James Wallace's brother-in-law and ſollicitor), who had acquainted the ſaid Earl of Cork, that Sir James Wallace had written a complaint againſt Mr. Bourne to the Lords of the Admiralty; that he the ſaid Earl of Cork then acquainted Mr. Sleigh with the purport of his errand, that he came as Mr. Bourne's friend, and ſhould expect Sir James's anſwer. And theſe deponents further ſay, that the ſaid Earl of Cork then expreſſed his ſurprize that he had not heard from Sir James Wallace, which made his Lordſhip conclude he was out of town, or waited the iſſue of his complaint to the Lords of the Admiralty, and which he thought argued no great ſign of his intention to anſwer Mr. Bourne's challenge, but that if he did, he ſhould be very happy to convince Mr. Bourne how ſincerely he was his friend. And theſe deponents further ſay, that, during the whole courſe of the converſation, the ſaid Earl of Cork expreſſed himſelf towards Mr. Bourne ſeemingly with the moſt perfect eſteem and friendſhip, and at parting profeſt his higheſt approbation of Mr. Bourne's conduct, and making the ſtrongeſt offers of his countenance and ſupport. And theſe deponents further ſay, that they have been long upon habits of intimacy and friendſhip with the ſaid Charles Bourne, and that, ſo far from finding in him a tendency to quarrels and diſputes, he has ever conducted himſelf in ſuch a manner as to make his line of conduct worthy the imitation of thoſe who value themſelves moſt upon the nicety of their feelings and propriety of conduct.

LAURENCE DESBOROUGH.
JAMES HAMILTON.

Sworn at my houſe in Spring-Gardens, the 17th of June, 1783, by the ſaid Laurence Deſborough.
W. H. ASHHURST.

Sworn by the ſaid James Hamilton, at my houſe in Spring-Gardens, the 17th of June, 1783.
W. H. ASHHURST.

JAMES SMITH BARR, Printer of the Morning Herald, maketh oath, That, on the 20th day of December laſt, the following article was brought to him by Mr. Sleigh, (who, this deponent is informed, is Sir James Wallace's ſollicitor and relation,) ſigned by Sir James Wallace, with directions to be inſerted in the Morning Herald of the next day, and which upon the authority aforeſaid was accordingly inſerted, viz.

" Mr.

" Mr. Editor,—Upon my arrival in town " yeſterday, I was informed that a pub- " lication had appeared in your paper " of Monday laſt, caſting very pointed " ſcandalous aſperſions on my character, " of which, from ſome late tranſactions, " I ſuppoſe Lieutenant Bourne, of the " Marines, to be the author. The " whole of Bourne's ungentlemanlike " behaviour, which I have laid before " the Admiralty, is too long for a news- " paper publication: I ſhall therefore " only ſay, that he has never once come " to the point, either at Jamaica, Bath, " or London; and if he had, I can de- " monſtrate that I was prepared for him " at each place, and might have prevented " all his vain boaſtings and falſe aſſer- " tions. Ja. Wallace, December, 20th, " 1782."

And this deponent further ſaith, that for the inſertion of the above-mentioned article, the ſaid Mr. Sleigh paid this deponent half a guinea.

J. S. BARR.

Sworn at Guildhall, London, the 16th day of June, 1783, MANSFIELD.

MAJOR-GENERAL ARTHUR COLLINS maketh oath, That Lieutenant Charles Bourne, of the Marines, was under his command at the Plymouth diviſion for a conſiderable time, where they lived together at the marine meſs; that he this deponent always noticed the ſaid Lieutenant Bourne to have conducted himſelf as an officer and a gentleman, in every ſenſe of the word, and never gave the leaſt ſign of a quarrelſome diſpoſition; on the contrary, he was conſtantly remarked for eaſe, good humour, and the gentility of his behaviour.

ARTH. COLLINS.

Sworn at Chatham, in the county of Kent, this 29th day of May, 1783, before me, J. SIMMONS, A Commiſſioner, &c.

CAPTAIN JAMES HAWKER, late Commander of his Majeſty's ſhip Iris, maketh oath, That he knows Lieutenant Charles Bourne, the defendant above named, and has known him for ſome years; that the ſaid defendant ſailed with this deponent, and under this deponent's command, in the Iris, as Firſt Lieutenant of Marines, from the 20th day of July, 1779, to the 10th day of June, 1780, during which time the ſaid defendant behaved like a gentleman in every reſpect, as well as an obedient good officer. And this deponent alſo ſaith, that he never had the leaſt reaſon to be at any time diſſatisfied with his conduct or behaviour; that, during the time the ſaid defendant ſerved with this deponent, the ſaid defendant was dangerouſly wounded in action with a French frigate of ſuperior force, where he behaved with great gallantry and alacrity, and, being very ill with the ſaid wound, was obliged to be landed at New-York, and when this deponent came home in the Renown man of war, the ſaid defendant returned with him as a paſſenger, being then very ill of his ſaid wound. And this deponent further ſaith, that, during the whole of this deponent's knowledge or acquaintance with the ſaid defendant, he never knew him quarrelſome or troubleſome.

JAMES HAWKER.

Sworn at Plymouth aforeſaid, the 10th day of June, 1783, before me GEORGE WOODWD. MALLET, A Commiſſioner, &c.

BOWLES MITCHELL, late Firſt Lieutenant of his Majeſty's ſhip Iris, maketh oath, That he hath off and on been intimately acquainted with Lieutenant Charles Bourne, the defendant above named, theſe four years, above a year of which he meſſed and did duty with the ſaid Charles Bourne; and having unremitted opportunities of obſerving the conduct and behaviour, both public and private, of the ſaid Charles Bourne, he ever found him an enviable character both for his benevolence and pleaſant temper, and poſſeſſed of every good quality to endear him to mankind and ſociety: nor would it be but juſtice to acknowledge the ſatisfaction he always had, as an executive officer in the ſhip, in giving the ſaid Charles Bourne any directions for executing his duty, as they were always done with the greateſt care and diſpatch, and with that zeal he always ſhewed to ſervice; having been in action with the ſaid Charles Bourne, where he exerted himſelf, and received a deſperate wound, his uſual coolneſs and good-temper ſtill remained. And this deponent

 further

further ſaith, that, by ſerving as Lieutenant in the ſhip the ſaid defendant Charles Bourne came home in from America, he had an opportunity of obſerving his intrepidity and coolneſs under the moſt excruciating pain (occaſioned by a canniſter ſhot lodging behind the ſhoulder blade), which he bore with that manly fortitude and good-temper he was always known to poſſeſs.

BOWLES MITCHELL.

Sworn at Serjeant's-Inn, 29th May, 1783, before me,
W. H. ASHHURST.

HENRY INMAN, late Lieutenant of his Majeſty's ſhip Le Hector, maketh oath, and ſaith, That he has been acquainted with Charles Bourne, the above defendant, for 12 months and upwards, ſix months of which they lived together: that they ſailed from the iſland of Jamaica about the latter end of July, 1782, on board the Le Hector aforeſaid, commanded by John Bourchier, eſq. And this deponent further ſaith, that, under all the known calamities that attended that unfortunate voyage, in the moſt trying and alarming ſituation, ſurrounded by death and carnage in action, and ſuffering all the horrors of hunger, thirſt, ſickneſs, and apparent diſſolution, the manly ſpirit and reſolution of the ſaid Charles Bourne was ſuch as diffuſed comfort, hope, courage, and perſeverance, to me, and all who had an opportunity of obſerving him. And this deponent further ſaith, that he has never known the ſaid Charles Bourne in the leaſt to breed diſſentions or quarrels; but, on the contrary, that he was ever foremoſt to make them up when they happened with other officers, and, in the opinion of this deponent, the ſaid Charles Bourne is incapable of any degree of malice, and is a quiet, ſober, amiable, and brave officer.

HENRY INMAN.

Sworn at Plymouth Dock, in the County of Devon, this 10th day of June, 1783, before me
W. DANSEY,
A Commiſſioner, &c.

THOMAS MIDDLETON, late Lieutenant of his Majeſty's ſhip Le Hector, maketh oath, and ſaith, That he has been intimately acquainted upwards of a year with Charles Bourne, the defendant in this cauſe, ſix months of which they lived together, and, from the obſervations this deponent has made on the diſpoſition and character of the ſaid Charles Bourne, he verily believes him incapable of harbouring a diſhonourable or an ill-natured thought. And this deponent further ſaith, that, on their paſſage from Jamaica, in Le Hector aforeſaid, in the month of October laſt, they had a long and deſperate battle with two French men of war, during which, as well as through a ſucceeding ſcene of ſickneſs, thirſt, and hunger, in a ſinking ſhip, a conſiderable diſtance from any land, and precluded from every proſpect of deliverance, the cool and unabated intrepidity of the ſaid Charles Bourne inſpired courage and hope to every perſon around him. And this deponent further ſaith, that ſo far from the ſaid Charles Bourne's being of a quarrelſome diſpoſition, that he has ſeen many inſtances of his accommodating the diſputes of others; and deponent firmly believes that there is not exiſting a more peaceable, worthy, and gallant officer.

THOMAS MIDDLETON.

Sworn as Guildhall, London, the 18th day of June, 1783, before
MANSFIELD.

JOHN BOURCHIER, Eſq. Commander of his Majeſty's late ſhip Le Hector, maketh oath, That the above defendant Charles Bourne was ſerving on board his Majeſty's ſaid ſhip from the month of May to the month of October, 1782, when ſhe was unfortunately loſt. And this deponent ſaith, that, during all the ſaid time, the ſaid Charles Bourne behaved in every reſpect becoming the character of a gentleman and an officer, and very much to the ſatisfaction of this deponent, not in the leaſt inclined to be troubleſome or quarrelſome, and in action, and during all that unfortunate voyage, behaved with the greateſt attention and good conduct. And this deponent further ſaith, that the high opinion he entertains of the ſaid Charles Bourne would make him happy, upon all occaſions, to receive him as an officer on board any ſhip this deponent might have the honour to command in his Majeſty's navy.

JOHN BOURCHIER.

Sworn at Richmond, in the county of Surry, the party being indiſpoſed, the 19th day of June 1783, before me,
JOHN NEWLAND. By Commiſſion
JAMES

JAMES HAMILTON, Eſq. Captain and late Adjutant of the Portſmouth diviſion of marines, maketh oath, and ſaith, That the annexed paper-writing is a copy of the reſolutions of the officers of the Portſmouth diviſion of Marines, aſſembled together on the 5th day of May laſt, for the purpoſe of enquiring into the conduct of the ſaid Charles Bourne, with regard to his diſpute with the ſaid Sir James Wallace: and this deponent further ſaith, that the names of the ſeveral gentleman ſubſcribed to the ſaid reſolutions, are the names of the officers preſent at the ſaid meeting, and ſigning and aſſenting to the ſame.

J. HAMILTON.

Sworn at my houſe in Spring Gardens, the 17th of May, 1783,
W. H. ASHHURST.

At a meeting of Lieutenant-General Smith, and the Officers of the Portſmouth Diviſion of Marines, to enquire into the conduct of Lieutenant Charles Bourne, reſpecting a diſpute which he has for ſome time been engaged in with Sir James Wallace, and which has been much the ſubject of public converſation, in conſequence of what was at that meeting related by Captains Webber and Hamilton, as well as what had appeared in the public prints under the ſignatures of Sir James Wallace and Lieutenant Bourne, together with a late public tranſaction for which Lieutenant Bourne is now under proſecution by Sir James Wallace, the officers thought proper to agree to the following reſolutions, viz.

That it is the opinion of the officers of the Portſmouth Diviſion of Marines, That Lieutenant Bourne, conceiving himſelf to have been groſsly ill treated by Sir James Wallace on board the Warrior, was highly juſtified in attempting to procure from Sir James Wallace an explanation of his conduct towards him.

It is likewiſe the opinion of the ſaid officers, That Lieutenant Bourne, in attempting to obtain a meeting with Sir James Wallace, for the purpoſe of an explanation, conducted himſelf with ſpirit and with propriety.

The ſaid officers are further of opinion, That it would be highly improper for a gentleman, honoured with a commiſſion in his Majeſty's ſervice, to accept of a challenge from an officer, who, having been publickly caned, and ſtigmatized with epithets the moſt ſevere and diſgraceful, thought proper to ſeek for his redreſs in a Court of Juſtice, though the perſon who had ſo treated him was an officer of eſtabliſhed good character, and as ſuch reſpected by his corps. It is therefore the opinion of the officers of the Portſmouth Diviſion, that Lieutenant Bourne be acquainted, that they think his accepting a challenge from Sir James Wallace (ſhould Sir James Wallace think proper to ſend him one) will be a degradation of his rank and character as an officer and a gentleman.

Meſs-Room, May 5th, 1783.

Hen. Smith,	Lieut-Gen.	L. C. Meares,	Lieut.
J. Bowater,	Lieut-Col.	James Hoggan	ditto
H. Fletcher,	ditto	John James,	ditto
E. Owen,	Major,	Wal. Tane,	ditto
Theo. Boirrond,	ditto	Rich. Paſcoe,	ditto
J. Johnſon,	ditto	D. Monteith,	ditto
Sam. Davys,	ditto	Joſeph Breedon,	ditto
John Webber,	Capt.	Thos. Pearce,	ditto
Alex. M'Donald	ditto	Php. Stapleton,	ditto
Sam. Norris,	ditto	Wm. Knighton,	ditto
Thos. Sterling,	ditto	Rich. Simpſon,	ditto
David Brown,	ditto	Thos. Guildford,	ditto
Thos. Archbold,	ditto	J. Whittaker,	ditto
Wm. Graham	ditto	Wm. Dawes,	ditto
Sam. Forſter,	ditto	Wm. Darley,	ditto
T. Mercer,	ditto	Wm. Gould,	ditto
Wm. Bowater,	ditto	John Richardſon,	ditto
John Hall,	ditto	Geo. Katon,	ditto
J. Hamilton,	ditto	Claude Carter,	ditto
Ewd. Gunter	ditto	N. Harriſon,	ditto
Wat. Tench,	ditto	Paul Crebbin,	ditto
James Pearce,	ditto	J. Mackenzie,	ditto
J. Mills,	Lieut. & Adj.	Ralph Wilſon,	ditto
James Ralfs,	Lieut.	Fred. Pearce,	ditto
Thos. Ranken,	ditto	Thos. Richardſon,	ditto
James Horne,	ditto	James Wemyſs,	ditto
Oliver Nailor,	ditto	Geo. Dacres,	ditto
John Mace,	ditto	Wm. Wilſon,	ditto
Thos. Nailor,	ditto	F. Mouatt,	ditto
J. N. Oldfield,	ditto	H. Pye,	ditto

JAMES BERKELEY, Captain Lieutenant Adjutant of the Chatham Diviſion of his Majeſty's Diviſion of Marine Forces, maketh oath, and ſaith, That he laid a copy of the reſolutions hereunder written, which had been tranſmitted to him by Captain Hamilton, Adjutant of the Portſmouth Diviſion, before Major-General Collins, Major-General Marriot, Colonel Preſton, Major Jackman, Major Wood, Major Stretch; Captains Conyers, Hill,

Hill, Cumming, Robert Anderſon, Henry Anderſon, Collins, Dawes, Madden, Hillcoat, and Moorſom; Lieutenants Hawkſhaw, Grice, Pilcher, Hawkins, Anderſon, Fynmore, Wills, Adney, Carter, Mackintoſh, Wheeler, Boys, Mackenzie, Blagrave, Crump, Singleton, Macintoſh, Whiteman, Wolf, Gapper, Young, Butler, Evans, Lee, Gordon, Buttler, Stranſham, Morriſon, Rowley, Newton, Tatnall, Garlike, Tocker, Dodd, Blakeney, Dagge, and Reynolds; officers belonging to the Chatham Diviſion of Marines, and aſſembled at that place, to the beſt of this deponent's recollection, on the 26th day of March laſt, for the purpoſe of enquiring into the conduct of Lieutenant Charles Bourne towards Sir James Wallace, and conſidering the propriety of the ſaid reſolutions of the officers of the Portſmouth Diviſion; when this deponent was ordered to declare to Captain Hamilton and Lieutenant Bourne the entire approbation of the ſaid officers to the two firſt articles of the ſaid reſolutious; but that they were of opinion, that aſſenting to the third article would be wounding the feelings of Lieutenant Bourne, whoſe whole conduct had been ſuch as not to leave them the ſmalleſt room to doubt of his continuing to act with propriety.

Copy of the Reſolutions above referred to, viz.

I. That it is the opinion of the officers of the Portſmouth Diviſion of Marines, That Lieutenant Bourne, conceiving himſelf to have been groſsly ill treated by Sir James Wallace on board the Warrior, was highly juſtified in attempting to procure from Sir James Wallace an explanation of his conduct towards him.

II. It is likewiſe the opinion of the ſaid officers, That Lieutenant Bourne, in attempting to obtain a meeting with Sir James Wallace, for the purpoſe of an explanation, conducted himſelf with ſpirit and with propriety.

III. The ſaid officers are further of opinion, That it would be highly improper for a gentleman, honoured with a commiſſion in his Majeſty's ſervice, to accept of a challenge from an officer, who, having been publickly caned, and ſtigmatized with epithets the moſt ſevere and diſgraceful, thought proper to ſeek for his redreſs in a Court of Juſtice, tho' the perſon who had ſo treated him was an officer of eſtabliſhed good character, and as ſuch reſpected by his own corps. It is therefore the opinion of the officers of the Portſmouth Diviſion of Marines, that Lieutenant Bourne be acquainted, that they think his accepting a challenge from Sir James Wallace (ſhould Sir James Wallace think proper to ſend him one) will be a degradation of his rank and character as an officer and a gentleman.

J. BERKELEY.

Sworn at my houſe, in Lincoln's-Inn-Fields, the 9th day of June, 1783,

F. BULLER.

GEORGE JAMES PROSSER, Lieutenant and Adjutant of the Plymouth Diviſion of his Majeſty's Marine Forces, maketh oath, That, having received a letter from Captain Hamilton, Adjutant of the Marines at Portſmouth, incloſing the reſolutions of the officers of that diviſion, aſſembled to enquire into the conduct of Lieutenant Charles Bourne, in reſpect to a diſpute between him and Sir James Wallace, Knight, and deſiring that the ſame might be laid before the officers of the Plymouth Diviſion of Marines, for their opinion; he, this deponent, did accordingly lay the ſaid reſolutions before a general meeting of the officers aſſembled for that purpoſe, which the officers preſent being perfectly ſatisfied with Mr. Bourne's conduct upon that occaſion, as well as every other, thought proper to agree to the ſame reſolutions, of which the following is a copy, viz.

Firſt, That it is the opinion of the officers of the Plymouth Diviſion of Marines, that Lieutenant Bourne, conceiving himſelf to have been groſsly ill-treated by Sir James Wallace, on board of the Warrior, was highly juſtified in attempting to procure from Sir James Wallace an explanation of his conduct towards him.

Secondly, It is likewiſe the opinion of the ſaid officers, That Lieutenant Bourne, in attempting to obtain a meeting with Sir James Wallace, for the purpoſe of an explanation, conducted himſelf with ſpirit and with propriety.

Thirdly, The ſaid officers are further of opinion, That it would be highly improper for a gentleman honoured with a commiſſion in his Majeſty's ſervice, to accept of a challenge from an officer, who, having been publickly caned,

caned, and ſtigmatized with epithets the moſt ſevere and diſgraceful, thought proper to ſeek for his redreſs in a court of Juſtice, though the perſon who ſo treated him was an officer of eſtabliſhed good character, and as ſuch reſpected by his own corps. It is therefore the opinion of the officers of the Plymouth Diviſion of Marines, that Lieutenant Bourne be acquainted, that they think his accepting of a challenge from Sir James Wallace (ſhould Sir James think proper to ſend him one) will be a degradation of his rank and character as an officer and a gentleman.

And this deponent further ſaith, That the General, Field Officers, and other Officers then at quarters, unanimouſly agreed to the above reſolutions.

G. J. PROSSER,
Lieut. and Adjutant of Marines.

Sworn at Plymouth, in Devonſhire,
the 13th day of June, 1783,
before me,
E. WHITEFIELD,
A Commiſſioner, &c.

Affidavits on the Part of the Proſecution.

SIR JAMES WALLACE, of Hanworth, in the county of Middleſex, Knight, maketh oath, and ſaith, That the defendant, Charles Bourne, embarked as the Firſt Lieutenant of Marines on board his Majeſty's ſhip the Warrior, (under the command of this deponent,) ſome time in November, 1781, whilſt the ſaid ſhip was at Portſmouth, fitting out for a voyage to the Weſt-Indies. And this deponent ſaith, that, on or about the 11th day of January, 1782, the Warrior ſailed from Portſmouth, and arrived at Madeira on or about the 1ſt or 2d of February; and that, on her arrival there, this deponent told Mr. Spry, the Firſt Lieutenant of the ſaid ſhip, that all the officers belonging to the ſhip might go aſhore every day whilſt they lay there, but that this deponent expected them to ſleep on board every night, obſerving to him, at the ſame time, that, as the combined fleets were then out, they ſhould look very ridiculous if any of their cruizers ſhould run in there in the night, and take the ſhip, without any of her officers being aboard. And this deponent ſaith, that, on Saturday the 2d of February, according to the beſt of this deponent's recollection as to the time, this deponent introduced the ſaid Charles Bourne, with ſome of his other officers, to Mr. Murray, the Britiſh Conſul there, where he dined with this deponent; and, a little time before the company that dined there broke up for the evening, the ſaid Charles Bourne aſked this deponent's permiſſion to continue on ſhore for that night, and this deponent being unwilling to mortify him by a refuſal of his requeſt before ſo large a company, gave him leave to ſtay on ſhore for that night, notwithſtanding the public orders which this deponent had before given for the officers to ſleep on board. And this deponent ſaith, that the ſaid Charles Bourne continued aſhore, not only that night, but all the next day, and the night following, and great part of the third day, and got into broils and quarrels with the inhabitants, and behaved ſo indecently at the theatre, as to be turned out during the performance, as this deponent hath been informed and believes. And this deponent ſaith, that the morning after the ſaid Charles Bourne returned to the ſhip, he ſent a note to this deponent, who was then on ſhore, in the name of himſelf and Mr. Markett, one of the Lieutenants of the ſaid ſhip, thanking this deponent for his polite introduction of them to the Governor of Madeira, and acknowledging themſelves indebted to this deponent for the civilities which they had received, and the polite treatment which they had experienced from the inhabitants whilſt they were on ſhore (alluding, as this deponent believes, to their having been beaten and ill-treated by the inhabitants, and turned out of the theatre). And this deponent ſaith, that the Warrior was then preparing to leave Madeira, and that the morning after he went on board, this deponent ſent for the ſaid Charles Bourne and Mr. Markett into his cabin, and before Major Varlo and Mr. Spry, who he had deſired to be preſent, and who were then in the cabin, aſked them what

they meant by the note which they had ſent to this deponent, when the ſaid Charles Bourne made anſwer, that they thought this deponent had uſed them very ill in not having introduced them to the Governor of Madeira; upon which this deponent told them, that, if they thought ſo, he, this deponent, from that time could be no longer acquainted with them: but this deponent poſitively ſaith, that he did not then put the following queſtion to the ſaid Charles Bourne, viz. "Why, if you thought yourſelf aggrieved or affronted, did not you call me out?" or uſed any other words to that or the like effect. And this deponent ſaith, that, as the ſaid Charles Bourne never made any apology to this deponent for ſuch improper conduct, nor ſeemed to be ſenſible that he had acted with any impropriety, he never afterwards dined with this deponent at his table. And this deponent ſaith, that, on or about the 8th of March, the Warrior joined Lord Rodney's fleet, and continued with it until after the engagement of the 12th of April, when they ſailed with the ſquadron under the command of Lord Hood for Jamaica, but ſeparated from that ſquadron in chaſe of ſome of the French ſhips on the 21ſt of April, and did not join it again until they arrived at Jamaica. And this deponent ſaith, that, between ten and eleven o'clock in the night of the 24th of April, 1782, according to the beſt of this deponent's recollection as to the time, whilſt this deponent was ſitting in his cabin with Major Varlo and Mr. Spry, a great noiſe was made in the ward-room, and a meſſage ſent up to this deponent to know if he had ordered the ward-room lights to be put out, upon which this deponent told the ſaid Mr. Spry to go down, and enquire into the reaſon of the diſturbance and ſuch meſſage; which the ſaid Mr. Spry accordingly did, and on his return informed this deponent, that Mr. Bourne had been making much noiſe, and that Mr. Stephenſon, the then acting Second Lieutenant, who was then in bed, and was to turn out to keep the middle watch, had repeatedly deſired Mr. Bourne not to make ſo much noiſe, as it prevented him from ſleeping, and, on Mr. Bourne's taking no notice of his requeſt, he had ordered the ward-room lights to be put out, which had occaſioned very high words, and a challenge between the ſaid Charles Bourne and Mr. Stephenſon. And this deponent ſaith, that, conceiving it a point of duty to take notice of ſuch proceedings, this deponent ſent for the ſaid Charles Bourne into his cabin, and aſked him, in the preſence of Major Varlo and Mr. Spry, who were then ſitting with this deponent, how he, the ſaid Mr. Bourne, could ſend up a meſſage to this deponent to know if this deponent had ordered the ward-room lights to be put out, when he, the ſaid Charles Bourne, knew that this deponent had not given any ſuch orders? to which the ſaid Charles Bourne replied, that he thought this deponent had given ſuch orders, or Mr. Stephenſon would not have done ſo; and this deponent then told the ſaid Charles Bourne, that he was a very troubleſome man, and he went out of the cabin muttering ſomething to himſelf: and this deponent poſitively ſaith, that neither the Maſter or Surgeon, nor Mr. Stephenſon, the Second Lieutenant, or any of them, were then, or ever had been that evening, in this deponent's cabin, and that nothing that was ſaid or done by the ſaid Mr. Stephenſon in the ward-room, or that happened between the ſaid Mr. Stephenſon and Charles Bourne, was at the inſtance of this deponent, nor was this deponent in any manner privy to, or knew thereof. And this deponent alſo poſitively ſaith, that the ſaid Charles Bourne did not repeat any meſſage from the gentlemen of the ward-room to this deponent, nor did this deponent deſire the ſaid Charles Bourne to get away, nor ſay any thing more to him than that he was a troubleſome man, as herein before is mentioned. And this deponent ſaith, that the next day this deponent was walking on the larboard ſide of the quarter-deck, when the ſaid Charles Bourne came up to this deponent with a very aſſuming air and geſture, and once or twice paſſed this deponent in a manner that appeared to this deponent to convey an intended inſult to him, or intention to provoke him to take ſome notice of the ſaid Charles Bourne's behaviour; upon which this deponent called to Mr. Spry, who was then walking on the oppoſite ſide of the deck, and ſaid to him, "Mr. Spry, my orders are that Mr. Bourne does not walk with me;" upon which the ſaid Mr. Bourne quitted that ſide of the quarter-deck where this deponent was walking, and either went to the oppoſite ſide of the deck, or into the ward-room, without making any ſuch remonſtrance, to the knowledge of this deponent, againſt this deponent's ſaid order, as by his affidavit is alleged. And this deponent ſaith,

that

that it is a very unuſual thing, and contrary to the cuſtom of the navy, for any officer, or other perſon, on board any of his Majeſty's ſhips, to walk, or attempt to walk, on the quarter-deck, with the Captain of the ſaid ſhip, contrary to his will and pleaſure; every Captain of any of his Majeſty's ſhips of war, having an undoubted privilege of walking the quarter-deck, either alone, or with any perſon on board the ſhip that he may think proper to walk with. And this deponent poſitively ſaith, that he was walking upon the larboard ſide of the quarter-deck, when the ſaid Charles Bourne came upon that ſide of the quarter-deck, and abſolutely denies, that he either then, or at any other time, on ſeeing the ſaid Charles Bourne on the quarter-deck, came running out of his cabin in a violent manner, with his fiſts clinched to the ſaid Charles Bourne's face, muttering the word ſcoundrel; or ever, with his fiſts clinched in a menacing and provoking manner, driving the ſaid Charles Bourne from ſide to ſide of the ſaid ſhip; or that, during the voyage of the ſaid ſhip Warrior from England to Jamaica, the ſaid Charles Bourne experienced from this deponent ſeveral or any inſtances of inſult, outrage, and unofficer-like behaviour, as the ſaid Charles Bourne has very untruly depoſed. And this deponent alſo denies, that this deponent then walked ſeveral times backwards and forwards in a rage, and then went into his cabin, and returned, and called for Lieutenant Spry to attend to his public orders; or that this deponent ever gave any other orders upon that occaſion, or in any other manner, than as before mentioned; or then held ſuch converſation with the ſaid Charles Bourne touching ſuch orders; or that the ſaid Charles Bourne then deſired this deponent to confine him in a regular way, as the ſaid Charles Bourne has alleged. And this deponent ſaith, that, in about ſix days afterwards, the Warrior arrived at Jamaica, and was ſoon after ordered by Lord Rodney on a cruize to the windward, and this deponent ſaith, that he believes the defendant then wrote ſome letter to Lord Rodney requeſting an enquiry into his conduct; and that Lord Rodney ſoon afterwards ordered the ſaid Charles Bourne from on board the Warrior, into the Hector, one of the French ſhips taken by him in the engagement of the 12th of April, for which this deponent has no doubt that Lord Rodney had then his ſufficient reaſons: but this deponent ſaith, that, if he this deponent had then been diſpoſed to bring the ſaid Charles Bourne to a Court-Martial, or had conceived that implacable hatred againſt him which he has alleged, he would inevitably have been broke, and for ever diſmiſſed the ſervice for his repeated diſorderly behaviour during the time that he was under this deponent's command on board the Warrior, as this deponent verily believes. And this deponent further ſaith, that ſo far from being ill diſpoſed towards the ſaid Charles Bourne, this deponent hath on ſeveral occaſions ſhewn his lenity and forbearance towards him; and, in particular, this deponent ſaith, that, ſoon after the ſaid Charles Bourne embarked on board the Warrior, he aſked this deponent's leave to go to London for three days on particular buſineſs, which this deponent told him he could not grant, but that as it was particular buſineſs which required his going, and that only for three days, this deponent would take no notice of his abſence during that time: and this deponent ſaith, that the ſaid Charles Bourne accordingly went to London, and did not return again to the ſhip for fifteeen days, which this deponent overlooked. And this deponent ſaith, that in the duſk of the evening of the 15th of May, according to the beſt of this deponent's recollection as to the time, as this deponent was walking in the ſtreet in Port Royal, in company with Major Varlo, the ſaid Charles Bourne met them, and ſaid that he had ſomething to ſay to this deponent in private, when this deponent told him, that, if he had any thing to ſay to this deponent, to ſay it before Major Varlo, that he might hear it, for that this deponent would have nothing to ſay to the ſaid Charles Bourne in private; upon which the ſaid Charles Bourne turned away, ſaying It's very well; and which was all that then paſſed between the ſaid Charles Bourne and this deponent. And this deponent ſaith, that he then told Major Varlo what he this deponent apprehended the ſaid Charles Bourne then meant, and alſo this deponent's own ſentiments and intentions thereon. And this deponent ſaith, that, on or about the 17th of May, the Warrior ſailed on a cruize to the windward, from which ſhe returned in about two months; and this deponent, being at that time in a bad ſtate of health, found it neceſſary for his recovery to go to Europe, and his Majeſty's ſhip Reſolu-

tion

tion being then under orders to ſail for England, this deponent was on or about the 12th day of July appointed by Lord Rodney to the command of the ſaid ſhip. And this deponent ſaith, that, on or about the 20th of July, being two days before he was to ſail from Port Royal for England, as he this deponent was walking up a narrow lane in Port Royal, the ſaid Charles Bourne came out of a negro hut, and aſked this deponent if he had any thing to ſay to him, to which this deponent anſwered he had not; and the ſaid Charles Bourne then replied, he had ſomething to ſay to this deponent, if he would walk with him in private; upon which this deponent told the ſaid Charles Bourne, that he was determined never to have any thing to ſay to him in private; and this deponent, thereupon putting his hand upon his ſword, told the ſaid Charles Bourne to ſay before Captain Fiſher, of the Navy, who was then with this deponent, what he would be at; upon which the ſaid Charles Bourne left them, making uſe of ſome abuſive language, and joined an officer of marines, who was then at ſome diſtance from them: and this deponent abſolutely denies, that he then promiſed, or ſaid to the ſaid Charles Bourne, that he this deponent would do his duty, and that he the ſaid Charles Bourne ſhould hear from this deponent, or that any ſuch words then paſſed, or any thing more then happened between the ſaid Charles Bourne and this deponent than as before mentioned. And this deponent ſaith, that, as he was then ready to ſail for England, this deponent did not think it neceſſary or requiſite for him to ſtay there for any further explanation from the ſaid Charles Bourne. And this deponent ſaith, that he did not remain on the ſaid iſland for ſome weeks afterwards; for that in two days afterwards, according to the beſt of this deponent's recollection, this deponent ſailed from Port Royal, and arrived at Portſmouth on or about the 26th of September following: and this deponent ſaith, that, ſome little time afterwards, he went to Bath for his health, and in the beginning of December this deponent had fixed to return to London with his family, and his houſe at Bath was let to another family; and about two days before he was to have left Bath, a waiter from the White-Hart inn came to this deponent, into his dining-room, where he was ſitting with Lady Wallace, and delivered a verbal meſſage to this deponent, that a gentleman wanted to ſpeak to this deponent at the White-Hart; and this deponent then aſked the waiter who the gentleman was, and what was his name, which the waiter told this deponent he did not know, but that he had a foreign ſervant with him; and this deponent told the waiter to go back, and aſk the gentleman his name: and this deponent ſaith, that the ſame waiter ſome little time after returned, and told this deponent that the gentleman would not ſend his name, but deſired to know whether this deponent would go to him or not; upon which this deponent ſaid, he moſt certainly would not go to any one who would not ſend his name: and this deponent ſaith, that the waiter ſoon afterwards returned, and told this deponent that the gentleman's name was Bourne, upon which this deponent ſaid that he had no buſineſs with that gentleman. And this deponent ſaith, that ſome time afterwards the ſame waiter brought this deponent the letter or paper-writing from the ſaid Charles Bourne, of which the following is a copy:

Mr. Bourne acquaints Sir James Wallace, that, if he perſiſts in not ſeeing him, it will confirm the opinion Mr. Bourne has long entertained, that Sir James Wallace is deſtitute of every principal of honour and idea of a gentleman.

Mr. Bourne underſtanding that Sir James Wallace has ladies with him, is the reaſon he does not call on him in perſon.

White-Hart, Friday noon,
Decr. 6, 1782.
To Sir James Wallace.

And this deponent ſaith, that, as the ſaid Charles Bourne had been before acquainted, that this deponent was determined not to have any private interview with him, this deponent therefore apprehended that the ſaid Charles Bourne had ſome diſhonourable deſign againſt this deponent, and therefore thought it neceſſary to put himſelf upon his guard, and accordingly took his piſtols in his pocket when he went out the next morning. And this deponent ſaith, that, after he had walked about for ſome time in the public ſtreets and places, and was on his return home in the ſtreet where he lodged, he ſaw the ſaid Charles Bourne, at the diſtance of about 100 yards, in company with Captain Webber, of the Marines, walking down the ſtreet towards

this

this Deponent, and that the ſaid Captain Webber, upon ſeeing this deponent, left the ſaid Charles Bourne, and kept at ſome diſtance, whilſt the ſaid Charles Bourne walked on towards this deponent: and this deponent ſaith, that, as ſoon as the ſaid Charles Bourne came within a few paces of this deponent, he began to accoſt this deponent with ſaying that he had been looking for him, and was glad he had met with him at laſt; upon which this deponent interrupted him, by ſaying, I can have no converſation with you, ſir: and this deponent doth acknowledge, that he did thereupon make uſe of theſe further expreſſions, Send your friend, and propoſe your terms; I am provided for you: and this deponent thereupon took one of his piſtols out of his pocket, and ſhewed the ſame to the ſaid Charles Bourne, and told him to take care how he inſulted this deponent, for if he attempted to inſult him, he would inſtantly put him to death; upon which the ſaid Charles Bourne retreated to ſome diſtance, and then uttered the moſt foul and ſcandalous abuſe. And this deponent ſaith, that he thereupon went immediately to the lodgings of Captain Nugent, of the Navy, who was then at Bath, to requeſt him to be preſent with this deponent, in order to bear teſtimony what the ſaid Charles Bourne might have to ſay to this deponent, in caſe he ſhould ſend any meſſage to this deponent, in conſequence of what this deponent had then ſaid to him in the ſtreet; and this deponent, not meeting with Captain Nugent at home, went immediately to Admiral Sir Peter Parker's, to communicate the ſubject to him, and where this deponent met Captain Nugent, who, in a very friendly manner, offered to be preſent at any interview this deponent might have with the ſaid Charles Bourne. And this deponent ſaith, that he afterwards walked into the Creſcent, where he met Mr. Abbot, a Lieutenant in the Navy, who came home with this deponent from the Weſt Indies as Firſt Lieutenant of the Reſolution, and the ſaid Mr. Abbot, in converſation, aſked this deponent if he had ſeen Mr. Bourne; upon which this deponent told the ſaid Mr. Abbot of all that had paſſed between the ſaid Charles Bourne and this deponent, and at the ſame time aſked him (in caſe Captain Nugent ſhould be prevented by any engagement at the time) to be preſent at any interview this deponent might have with the ſaid Charles Bourne, which he very readily promiſed to do, and continued with this deponent all that day: and this deponent ſaith, that, upon his return home to dreſs before dinner, he received another letter from the defendant Charles Bourne, of which the following is a copy:

Sir,

I yeſterday by letter acquainted you, that I conſidered you as deſtitute of every principle of honour, and every idea of a gentleman; your infamous behaviour this morning in the ſtreet convinces me that you are a daſtardly coward and ſcoundrel. When I was in the ſhip you commanded, you treated me with the moſt unmerited inſolence and abuſe; becauſe you knew that it was not in my power, from my ſituation at that time, to reſent it. When no longer under your command, I ſeized the firſt opportunity that offered at Jamaica of demanding that ſatisfaction which an injured gentleman has a right to expect; but you meanly and cowardly retreated from my reſentment at that time, by giving me to underſtand that I ſhould hear from you; but in that you proved yourſelf a liar.

I flew to Bath immediately on my arrival in England: my meſſages and note to you yeſterday muſt have convinced you of my intentions; but you dared to offer inſults at a time you knew they could not be reſented; you have not reſolution to meet the man whom you ſo greatly injured. Your flying from Bath ſhall not protect you from my reſentment; the inſults I have received from you are too great to be forgotten or forgiven. I will expoſe you in the public prints as the ſcoundrel I know you to be, and treat you as ſuch wherever I meet you, for which purpoſe I will follow you to London, or any part of the world.

CHARLES BOURNE.

White-Hart,
Dec. 7, 1782.
To Sir James Wallace.

Which letter this deponent ſhewed to the ſaid Mr. Abbot, whilſt he was at dinner with this deponent, and afterwards adviſed with him upon the contents of it, which, in the opinion both of this deponent and the ſaid Mr. Abbot, was no anſwer to what had before paſſed between this deponent and the ſaid Charles Bourne; and as it did not appear to this deponent, that the ſaid Charles Bourne had

any intention of being more explicit, or that his deſigns were honourable to this deponent, this deponent reſolved not to detain his family there any longer on his account; and accordingly left Bath the next day about one o'clock, agreeable to his prior engagement. And this deponent ſaith, that, ſoon after his arrival from Bath, this deponent was informed that the ſaid Charles Bourne had moſt ſhamefully traduced this deponent's name and character, and done every thing that he could deviſe to prejudice the mind of the public againſt this deponent; that he had declared, that whilſt he was on board his Majeſty's ſhip the Warrior, and under this deponent's command, this deponent had holden his fiſt up at him, called him a ſcoundrel, told him if he loved fighting, he would make him ſhit bullets; and that at Jamaica, he, the ſaid Charles Bourne, had challenged this deponent, and that this deponent had refuſed to fight him; that he, the ſaid Charles Bourne, had ſeized this deponent by the collar there, and torn his collar; and that, after his arrival in England, he had again challenged this deponent at Bath, and that this deponent had refuſed to fight him there, and that he had caned this deponent there; and that, on his return to London, he had ſent Lord Cork to this deponent with a challenge, which this deponent had alſo refuſed. And this deponent poſitively ſaith, and moſt ſolemnly declares, that all and every the ſaid ſeveral aſſertions and declarations of the ſaid Charles Bourne, were and are abſolutely falſe and untrue; but this deponent ſaith, that, finding at this time that the ſaid Charles Bourne had involved his diſpute with this deponent with ſo many falſehoods, to prejudice the minds of every perſon who heard the ſame againſt him, this deponent therefore thought it indiſpenſably neceſſary to have the matter inquired into, and with that view wrote a letter of complaint againſt the ſaid Charles Bourne to the Lords of the Admiralty, who acquainted this deponent, that he ſhould before have repreſented the ſaid Charles Bourne's behaviour to the Commanding Officer, that a Court-Martial might have been aſſembled to try him for the ſame. And this deponent ſaith, that a publication having appeared in the Morning Herald, of the 16th of December laſt, caſting very pointed ſcandalous aſperſions upon this deponent's character, and this deponent verily believing that the ſame was written and publiſhed by the ſaid Charles Bourne, and having been informed that the ſaid Charles Bourne was then going about from one coffee-houſe to another, and in every place moſt maliciouſly publiſhing various falſe and ſcandalous reports, with an intent to vilify this deponent, and impeach his veracity, courage, and honour; this deponent, in order to prevent reports ſo injurious to his character and honour, from having the effect deſigned by the ſaid Charles Bourne, wrote the letter publiſhed by him in the Morning Herald of the 21ſt of December laſt, as this deponent was not at that time in poſſeſſion of proof to convict the ſaid Charles Bourne of being the author of ſuch falſehoods: but this deponent ſaith, that ſoon afterwards obtaining ſufficient proof of the ſame, and, in particular, that the Right Honourable the Earl of Cork, who, the ſaid Charles Bourne had aſſerted, had waited upon this deponent with a meſſage from the ſaid Charles Bourne, had never even undertaken to wait upon this deponent with any ſuch meſſage; therefore this deponent, conſcious of the falſehood of the ſeveral reports which had been propagated to vilify and traduce his name and character, commenced the preſent proſecution againſt the ſaid Charles Bourne, to bring his veracity to a public trial. And this deponent ſaith, that, long before the ſaid Charles Bourne made the aſſault upon this deponent (of which he ſtands convicted) in the public ſtreet, the ſaid Charles Bourne had been informed, and knew that he had defamed and traduced this deponent; and he had been told, both by Mr. Dundas, a Captain, and Mr. Abbot, a Lieutenant, in the navy, that he had never ſent any gentleman with a meſſage to this deponent, as he had aſſerted; and he had alſo been told, that the Right Hon. the Earl of Cork had contradicted the report which he had propagated of his Lordſhip's having waited upon this deponent with a meſſage from him, and that his Lordſhip had alſo diſavowed his ever having either waited or undertaken to wait upon this deponent with any ſuch meſſage; and the ſaid Charles Bourne had, in the preſence of Captain Cruikſhanks, of the 36th regiment of foot, aſked his Lordſhip's pardon for having made ſuch uſe of his name; and the ſaid Charles Bourne alſo very well knew, that a proſecution was carrying on againſt him in this Honourable Court by this deponent, in order to convict him of all his falſe aſſertions, and that the ſame would go before the Grand

Jury

Jury in a few days, at the time that he made his attack upon this deponent, for which, as well as for his falſe and ſcandalous libel upon this deponent, he ſtands to receive the judgment of this Honourable Court.

JAMES WALLACE.

Sworn at my Chambers, in Serjeants-Inn, the 1ſt of July, 1783.

E. WILLES.

SIR JAMES WALLACE, of Hanworth, in the county of Middleſex, Knight, and WILLIAM SLEIGH, of Whitehall, Weſtminſter, in the ſame county, Eſq. jointly and ſeverally make oath, and ſay, That ſome time in or about the month of Auguſt, 1781, theſe deponents, between ſeven and eight o'clock one evening, in company with William Thomſon, Eſq. the Commander of the ſhip Calcutta, in the ſervice of the Eaſt-India Company, and who is now in the Eaſt-Indies, or China, as theſe deponents believe, were going to take a boat at Whitehall-ſtairs, and that, upon the cauſeway leading from the ſtairs at Whitehall into the bed of the river, where the boats lay at low-water, which it then was, theſe deponents found a man walking down towards the ſide of the river, with two children on the one ſide of him, and a dog on the other, and, in order to paſs them upon the cauſeway, which could not be conveniently or eaſily done without making the dog either go forwards, or to one ſide, this deponent, Sir James Wallace, gave the dog a ſtroke with his ſtick for that purpoſe, when the man, whom theſe deponents afterwards found to be a Mr. Murphy, who then lived in apartments or lodgings in the upper part of the chapel ſtair-caſe, at Whitehall, began to make uſe of very uncivil and abuſive language, and with his fiſt ſtruck this deponent, Sir James Wallace, a blow in his face, which bruiſed and a little cut one of his lips; whereupon this deponent, Sir James Wallace, immediately ſeized upon the ſaid Mr. Murphy, in order to correct and puniſh him for his inſolent behaviour, which occaſioned a little ſcuffle between the ſaid Murphy and this deponent, Sir James Wallace, which was immediately put an end to by the interpoſition of the ſaid William Thomſon; and this deponent William Sleigh, and the ſaid Mr. Murphy, went away towards Whitehall; and this deponent William Sleigh attended him to know who he was, and where he lived; and this deponent Sir James Wallace, and the ſaid William Thomſon, followed them to the ſaid Murphy's lodgings up the chapel ſtair-caſe, at Whitehall, where they found the defendant Bourne, and upon this deponent Sir James Wallace's reprehending the ſaid Murphy for his rude and inſolent behaviour, the defendant Bourne, with great warmth and fury, took part with the ſaid Murphy, and attempted to juſtify his conduct, upon which theſe deponents believe that this deponent Sir James Wallace might aſk the defendant Bourne if he wanted to take the quarrel upon himſelf, but both theſe deponents deny that this deponent Sir James Wallace then ſeized the defendant Bourne by the breaſt, and demanded to know if he would fight; but theſe deponents ſay, that there were very high words on both ſides, and that the ſaid Murphy, or the defendant Bourne, demanded (as theſe deponents then knew where to find them) to know who theſe deponents and the ſaid William Thomſon were, which was told them, when they both immediately expreſſed the greateſt contrition for what had happened, and the ſaid Mr. Murphy wiſhed his dog had been in the Thames. And this deponent William Sleigh for himſelf ſaith, that, in a day or two afterwards, according to the beſt of this deponent's recollection as to the time, a letter was left at this deponent's houſe at Whitehall, addreſſed to the ſaid Sir James Wallace, who was then in the country, and ſealed with a wafer, upon which there appeared an impreſſion of a cypher of two letters, one of which being an M, led this deponent to ſuppoſe the ſaid letter might have been ſent by the ſaid Mr. Murphy, and therefore this deponent called upon the defendant Charles Bourne, and ſhewed him the ſaid letter, and aſked him if it was written by the ſaid Mr. Murphy; when the ſaid Mr. Bourne informed this deponent it was not; and this deponent then told him, if it had, this deponent would not have ſent the ſame to the ſaid Sir James Wallace, who was then at his houſe at Hanworth, as he did not chuſe to trouble him about ſuch a ridiculous affair: and the ſaid Charles Bourne then ſaid to this deponent, that he was very ſorry that ſuch a thing had ever happened, but this deponent denies that he entreated the ſaid defendant Charles Bourne to interfere, as he had done before, to prevent the conſequences that might attend the ſaid Sir James Wallace meeting with the ſaid

Mr.

Mr. Murphy, or that this deponent was much diſtreſſed about the ſame: and this deponent ſaith, that he was not then apprehenſive of any further difference between the ſaid parties, as the ſaid Mr. Murphy had, before they parted, expreſſed his concern for what had happened. And this deponent Sir James Wallace for himſelf ſaith, that he ſome little time afterwards received a letter from the ſaid Mr. Murphy, of which the following is a copy:

"Whitehall Chambers, 19th Sept. 1781.

"SIR,

"Extraordinary accidents are generally productive of extraordinary effects: perhaps no "one ever more ſo than in the preſent inſtance, that which occurred between you "and me at Whitehall-ſtairs. Notwithſtanding that accident, I continue to retain the "higheſt eſteem for the character of Sir James "Wallace; and, as a proof, have adopted this "method of becoming debtor to his goodneſs.

"A very deſerving youth, of ſixteen years "of age, who has been three years at ſea, and "is eſteemed a good ſeaman, wants very much "to be rated a midſhipman. He is a young "fellow of ſpirit, and am convinced, under "the patronage and from the example of Sir "James Wallace, would be of ſervice to his "country.—After this, I need only aſſure you, "ſir, that I remain, with great reſpect,

"Your moſt obedient,

"Humble ſervant,

"AR. CHARTERS MURPHY."

JAMES WALLACE.
WILLIAM SLEIGH.

Both ſworn at my Chambers, in Serjeants-Inn, the 1ſt of July, 1783.

E. WILLES.

WILLIAM VARLO, of Portſmouth, in the County of Hants, Eſq. a Major in his Majeſty's Marine Forces, maketh oath, and ſaith, That he this deponent was the Commanding Officer of the Marines embarked on board his Majeſty's ſhip the Warrior, under the command of Sir James Wallace, and that the defendant Charles Bourne was the Firſt Lieutenant of the ſaid Marines under this deponent's command. And this deponent ſaith, that the ſaid ſhip the Warrior ſailed from Portſmouth on or about the 11th of January, 1782, on her voyage to the Weſt-Indies, and in the courſe of ſuch voyage touched at Madeira on or about the 1ſt of February following; and that, whilſt the ſaid ſhip was lying in the road off Madeira, the ſaid Sir James Wallace, on his going aſhore, left orders with Mr. Spry, his Firſt Lieutenant, that the officers belonging to the ſhip might go on ſhore in the day-time, but that they were to return and ſleep on board every night. And this deponent ſaith, that the ſaid Charles Bourne dined with the ſaid Sir James Wallace at the Britiſh Conſul's at Madeira, one day during their ſtay there, and that the ſaid Sir James Wallace gave the ſaid Mr. Bourne leave to ſleep on ſhore that night, but that the ſaid Charles Bourne did not return to the ſhip the night following, but continued on ſhore two nights; and, after he returned to the ſhip, ſent a note or letter to the ſaid Sir James Wallace, thanking him for his polite introduction of him to the Governor of Madeira, and inſinuating that he was indebted to him for all the civilities which he had received, and the polite treatment that he had experienced from the inhabitants whilſt he was on ſhore. And this deponent ſaith, that the ſaid Sir James Wallace ſhewed the ſaid note or letter to this deponent, and aſked this deponent what he thought of the ſaid letter, and in what light this deponent conſidered the ſame? when this deponent expreſſed his ſurprize at the ſaid letter, and knowing that the ſaid Sir James Wallace had not introduced the ſaid Charles Bourne to the Governor of Madeira, this deponent told the ſaid Sir James Wallace, that he this deponent could not conſider the ſaid letter in any other light than as an intended inſult. And this deponent ſaith, that the day after the ſaid ſhip ſailed from Madeira, the ſaid Sir James Wallace ſent for the ſaid Charles Bourne into his cabin, and in the preſence of this deponent and Mr. Spry ſhewed the ſaid Charles Bourne the ſaid letter, and aſked him if he had ſent the ſaid letter to the ſaid Sir James Wallace, and in what light he the ſaid Sir James Wallace was to conſider the ſame, and whether it was meant as an inſult. And this deponent ſaith, that the ſaid Charles Bourne thereupon told the ſaid Sir James Wallace, that he the ſaid Charles Bourne imputed all the bad uſage which he had received from the inhabitants whilſt on ſhore to the inattention of the ſaid Sir James Wallace towards the ſaid Charles Bourne,

Bourne, and his not introducing him to the Portugueſe Governor as a Britiſh officer; upon which the ſaid Sir James Wallace told the ſaid Charles Bourne, that, if he thought ſo, he the ſaid Sir James Wallace, from that time, could be no longer acquainted with him the ſaid Charles Bourne. And this deponent further ſaith, that, after the engagement of the 12th of April between the Engliſh and French fleets, the Warrior ſailed with Lord Hood's ſquadron for Jamaica, but ſeparated from the ſaid ſquadron on or about the 21ſt of April, and did not join it again until they arrived at Jamaica. And this deponent ſaith, that, on or about the 24th or 25th of April, whilſt this deponent was ſitting with Sir James Wallace and Mr. Spry, his Firſt Lieutenant, in the cabin, between ten and eleven o'clock at night, they heard a very great noiſe in the ward-room, and one of the ſervants belonging to the ward-room brought up a meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, to know if the ſaid Sir James Wallace had ordered the ward-room lights to be put out; upon which the ſaid Sir James Wallace told Mr. Spry to go down into the ward-room, and enquire what was the matter. And this deponent ſaith, that the ſaid Mr. Spry accordingly went down into the ward-room, and ſoon afterwards returned, and told the ſaid Sir James Wallace, that the ſaid Charles Bourne had been making a very great noiſe in the ward-room; and that Mr. Stephenſon, the Second Lieutenant, who was then in bed, and was to turn out to keep the middle watch, had deſired the ſaid Charles Bourne not to make ſo much noiſe, as it prevented him the ſaid Mr. Stephenſon from ſleeping; and that the ſaid Charles Bourne, having taken no notice of the ſaid Mr. Stephenſon's requeſt, the ſaid Mr. Stephenſon had ordered the ward-room lights to be put out, which had occaſioned very high words and bad language between the ſaid Mr. Bourne and Mr. Stephenſon, and that they had challenged each other, when the ſaid Mr. Bourne ſent up the ſaid meſſage to the ſaid Sir James Wallace. And this deponent ſaith, that the ſaid Sir James Wallace thereupon ordered one of his ſervants to go down into the ward-room, and deſire the ſaid Charles Bourne to come up to him in the cabin; and that the ſaid Mr. Bourne accordingly came up into the cabin, when the ſaid Sir James Wallace aſked him, before this deponent and the ſaid Mr. Spry, how he the ſaid Charles Bourne could ſend up a meſſage to the ſaid Sir James Wallace, to know if he had ordered the ward-room lights to be put out, when he the ſaid Charles Bourne knew that the ſaid Sir James Wallace had not given any ſuch orders, and the ſaid Sir James Wallace deſired to know what the ſaid Charles Bourne meant by ſending up to him ſuch a meſſage? when the ſaid Charles Bourne told the ſaid Sir James Wallace, that he the ſaid Charles Bourne thought that the ſaid Sir James Wallace had given ſuch orders, or that the ſaid Mr. Stephenſon would not have done it; upon which the ſaid Sir James Wallace told the ſaid Charles Bourne that he was a very troubleſome man; and this deponent ſaith, that the ſaid Sir James Wallace made uſe of no other words or language to the ſaid Charles Bourne, and the ſaid Charles Bourne thereupon went out of the cabin, muttering ſomething to himſelf. And this deponent ſaith, that, in the evening of the next day, the ſaid Charles Bourne ſent a meſſage to this deponent, deſiring to ſpeak with this deponent in the ward-room, and that, on this deponent's going down into the ward-room, the ſaid Charles Bourne told this deponent, that the ſaid Sir James Wallace had ordered that he the ſaid Charles Bourne ſhould not walk on the ſame ſide of the quarter-deck with him the ſaid Sir James Wallace, and that he the ſaid Charles Bourne then conſidered himſelf a priſoner, upon which this deponent told the ſaid Charles Bourne, that he this deponent could not poſſibly conſider or look upon him in that light, and adviſed him on no account whatſoever to refuſe any duty, or diſobey any orders that might be given him. And this deponent ſaith, that the ſaid Charles Bourne never made any complaint to this deponent of the ſaid Sir James Wallace having treated him with any inſolence or abuſe, or in any other manner than ordering that he the ſaid Charles Bourne ſhould not walk on the ſame ſide of the quarter-deck with the ſaid Sir James Wallace. And this deponent ſaith, he doth not believe that the ſaid Charles Bourne, after ſuch converſation between him and this deponent as aforeſaid, any longer conſidered himſelf a priſoner, or under any reſtraint, in conſequence of the ſaid orders of the ſaid Sir James Wallace; for this deponent ſaith, that, on Sunday the 28th of April, the ſaid ſhip the Warrior, between 11 and 12 o'clock at night, diſco-

vered a Spaniſh ſchooner, which ſhe gave chaſe to, came up with, and took; and that they ſoon afterwards the ſame night diſcovered a man of war, which they took for a French ſhip, and gave chaſe to, and that the marines were thereupon ordered to quarters; and that the ſaid Mr. Bourne was then at his quarters, and, upon their coming up with the ſaid ſhip, they diſcovered her to be his Majeſty's ſhip the Sybil, commanded by Captain Rodney. And this deponent ſaith, that his Majeſty's ſhip the Warrior arrived at Jamaica on or about the 30th of April, and ſoon afterwards the ſaid Charles Bourne was ordered by Lord Rodney from on board the Warrior to the command of the Marines on board the Hector, one of the French prizes taken by Lord Rodney's fleet in the engagement of the 12th of April. And this deponent ſaith, that, as he this deponent was walking with Sir James Wallace in the ſtreet at Port Royal in Jamaica, in the duſk of the evening of the 15th of May, 1782, the ſaid Charles Bourne came up to them, and, addreſſing himſelf to the ſaid Sir James Wallace, ſaid, "I ſhall be glad to "ſpeak to you, Sir James;" to which Sir James Wallace made anſwer, "I have nothing "to ſay to you in private; if you have any thing "to ſay to me, do it before this gentleman," pointing to this deponent; "ſpeak that Cap-"tain Varlo may hear;" or words to that effect: and this deponent ſaith, that the ſaid Charles Bourne thereupon turned away from them the ſaid Sir James Wallace and this deponent, ſaying "It's very well, very well," or to that effect. And this deponent ſaith, that, during the whole time that the ſaid Charles Bourne was on board the ſaid ſhip the Warrior, under the command of the ſaid Sir James Wallace, this deponent never ſaw or heard, nor doth he believe that the ſaid Sir James Wallace did ever treat the ſaid Charles Bourne with any inſolence or abuſe; and that the ſaid Charles Bourne never made any complaint to this deponent, or inſinuated to this deponent that the ſaid Sir James Wallace had ever treated him with any kind of inſolence or abuſe, or made uſe of any abuſive or improper language to him, or treated him ill in any manner whatſoever, except his not having introduced him to the Governor of Madeira, which this deponent always informed the ſaid Charles Bourne that he had no right to complain of, as none of the other Officers belonging to the ſaid ſhip had been introduced to the ſaid Governor by the ſaid Sir James Wallace. And this deponent ſaith, that, if the ſaid Charles Bourne had ever made any complaint or repreſentation to this deponent of the ſaid Sir James Wallace having treated him the ſaid Charles Bourne with any kind of inſolence or abuſe, or otherwiſe in an improper manner, whilſt he was on board the ſaid ſhip under the command of the ſaid Sir James Wallace, he this deponent, as the commanding officer of the ſaid Charles Bourne, would have given the ſaid Charles Bourne all the protection and aſſiſtance in the power of this deponent againſt any ſuch inſult or abuſe, as well as in obtaining juſtice to be done to the ſaid Charles Bourne in reſpect thereof.

WM. VARLO.

Sworn at my houſe in Lincoln's-Inn-Fields, the 7th day of June, 1783, before

F. BULLER.

WILLIAM VARLO, of Portſmouth, in the county of Hants, eſq. a Major in the Portſmouth Diviſion of Marines, maketh oath, and ſaith, That he was preſent in Sir James Wallace's cabin on board his Majeſty's ſhip the Warrior, in the month of February, 1782, at the time mentioned and alluded to by Auguſtus Markett, late the Third Lieutenant of the ſaid ſhip, in his affidavit made in this cauſe on the 18th day of June inſtant, and that there were alſo preſent, at the ſame time, the ſaid Sir James Wallace, Mr. Spry the Firſt Lieutenant of the ſaid ſhip, the ſaid Auguſtus Markett, and the defendant Charles Bourne, and no other officers or perſons belonging to the ſaid ſhip, according to the beſt of this deponent's recollection and belief: and this deponent abſolutely denies that the ſaid Sir James Wallace then put the following queſtion to the ſaid Charles Bourne, viz. "Why, if you thought yourſelf aggrieved, or "affronted, did you not call me out?" or that the ſaid Sir James Wallace, to the beſt of this deponent's recollection and belief, then made uſe of any words to any other purport or effect than as is mentioned and ſet forth in the affidavit already made in this cauſe by this deponent on the 7th day of June inſtant. And this deponent further ſaith, that he never ſaw, nor did the ſaid Charles Bourne ever make any complaint whatſoever to this deponent as his Com-

Commanding Officer, nor did this deponent ever hear from any other perſon on board the ſaid ſhip the Warrior, nor does he know or believe that the ſaid Charles Bourne, during the voyage of the ſaid ſhip the Warrior from England to Jamaica, experienced from the ſaid Sir James Wallace any inſtances of inſult, outrage, and unofficer-like behaviour, or that the ſaid Sir James Wallace, on obſerving the ſaid Charles Bourne walking on the quarter-deck, did ever go out of his cabin with his fiſts clinched in a menacing and provoking manner, or in any other manner driving the ſaid Charles Bourne from ſide to ſide of the ſaid ſhip. And this deponent ſaith, that, if ever the ſaid Sir James Wallace had treated the ſaid Charles Bourne in any ſuch manner, this deponent muſt have heard of the ſame, and that this deponent ſhould and would have conſidered the ſaid Charles Bourne immediately under and intitled to the protection of this deponent, and that it would have been incumbent upon this deponent to have taken notice, and that this deponent would have taken notice, of the ſame, and endeavoured all in his power to have obtained redreſs for the ſaid Charles Bourne. And this deponent further ſaith, that, at the time of the quarrel between the ſaid Charles Bourne and Mr. Stephenſon, and the ſaid Charles Bourne ſending up a meſſage to the ſaid Sir James Wallace, to know if he had ordered the ward-room lights to be put out, and at the reſpective times that the ſaid Sir James Wallace then ſent for the ſaid Charles Bourne, and that the ſaid Charles Bourne then came into his cabin as mentioned in this deponent's former affidavit made in this cauſe as aforeſaid, no other perſon or perſons was or were then ſitting with the ſaid Sir James Wallace in his cabin, except this deponent and the ſaid Mr. Spry; and that neither the Maſter nor the Surgeon of the ſaid ſhip, or either of them, were then or ever had been there that evening; for this deponent ſaith, that the Maſter of the ſaid ſhip had loſt his leg in the engagement on the 12th of April, which was not a fortnight before that time, and was then confined to his bed in a cabin in the gun-room, and that neither the ſurgeon of the ſhip, nor Mr. Stephenſon the Second Lieutenant, or either of them, had ever been in the ſaid Sir James Wallace's cabin during the whole of that night. And this deponent abſolutely denies, that the ſaid Charles Bourne then repeated any meſſage from the gentlemen of the ward-room, with their reſpectful compliments; or that the ſaid Sir James Wallace then deſired the ſaid Charles Bourne to get away, or ſaid that he the ſaid Sir James Wallace would ſay nothing to him the ſaid Charles Bourne at that time, but that he the ſaid Sir James Wallace would take another opportunity, that the ſaid Charles Bourne ſhould hear from him; or that the ſaid Charles Bourne then replied to the ſaid Sir James Wallace, that he ſhould be happy in the honour, at any time, to hear what he the ſaid Sir James Wallace had to ſay; or that the ſaid Sir James Wallace and Charles Bourne, or either of them, then made uſe of any words to any other purport or effect than as mentioned and ſet forth in this deponent's ſaid former affidavit already made in this cauſe: and this deponent ſaith, that the next day, when the ſaid Charles Bourne ſent for this deponent into the ward-room, and told this deponent that the ſaid Sir James Wallace had ordered that he the ſaid Charles Bourne ſhould not walk on the ſame ſide of the quarter-deck with him, the ſaid Charles Bourne never ſaid or intimated to this deponent, that he the ſaid Charles Bourne had ever in any manner remonſtrated with, or made any reply to the ſaid Sir James Wallace on his giving ſuch orders, or deſired the ſaid Sir James Wallace to confine him in a regular manner, that he might have an opportunity of clearing himſelf, but only ſaid that he conſidered himſelf a priſoner, which this deponent then convinced him he had no reaſon and ought not to do. And this deponent ſaith, that they were not at ſea for two or three weeks after that time; for that the ſame happened on the 25th of April, 1782, and they arrived at Jamaica on the 30th of the ſame month, according to the beſt of this deponent's recollection and belief as to the time.

WM. VARLO.

Sworn in Court, 25th June, 1783.

By the Court.

THOMAS SPRY, of Portſmouth, in the county of Hants, Gent. a Lieutenant in his Majeſty's Royal Navy, maketh oath, and ſaith, That he was appointed the Firſt Lieutenant of his Majeſty's ſhip the Warrior, under the command of Sir James Wallace, upon or very

very ſoon after the ſaid Sir James Wallace's being appointed to the command of the ſaid ſhip, and that this deponent continued to be the Firſt Lieutenant of the ſaid ſhip from that time during the whole of her voyage to the Weſt-Indies, and until on or about the 15th day of May, 1782, when this deponent was appointed a Lieutenant of his Majeſty's ſhip the Barfleur, then at Jamaica, under the command of Lord Hood, and lately arrived at Spithead, and of which ſhip this deponent is ſtill a Lieutenant. And this deponent ſaith, that the defendant Charles Bourne embarked as the Firſt Lieutenant of Marines on board of the ſaid ſhip the Warrior ſome time in the month of November, 1781, according to the beſt of this deponent's recollection as to time; and this deponent ſaith, that at that time there were ſeveral other Marine Officers who were very deſirous of ſerving on board the ſaid ſhip, and that the ſaid Charles Bourne, who very ſoon after his coming on board the ſaid ſhip became very intimate with this deponent, frequently expreſſed to this deponent how exceedingly happy he was in having been ordered on board the ſaid ſhip, and that he had the higheſt opinion and reſpect for Sir James Wallace, and would not, on any conſideration, that he ſhould have miſſed or loſt his chance of being on board his ſhip. And this deponent further ſaith, that ſome little time after the ſaid Charles Bourne had embarked on board the ſaid ſhip, he informed this deponent, that he wiſhed to go to London for two or three days, and ſuppoſed that if he aſked Sir James Wallace's leave he would have no objection to it: and this deponent ſaith, that the ſaid Charles Bourne afterwards went to London, as this deponent believes, but did not return to the ſaid ſhip for upwards of a fortnight, according to the beſt of this deponent's recollection as to the time; and that the ſaid Charles Bourne, upon his return, told this deponent, that he had ſtaid longer in town than he ought to have done, and had hurried down for fear of being left behind, which would have diſtreſſed him very much; and this deponent then told him, that, as he had arrived in time before the ſhip ſailed, this deponent knew that Sir James Wallace would take no notice of his having exceeded his time of abſence, but thought that he ought to make ſome apology to the ſaid Sir James Wallace for having done ſo. And this deponent ſaith, that the ſeveral Officers belonging to the ſaid ſhip the Warrior were at that time living in perfect harmony and friendſhip with each other, and continued to do ſo until ſome little time after they left Madeira; for this deponent ſaith, that they arrived at Madeira ſome time on or about the 1ſt or 2d of February, 1782, according to the beſt of this deponent's recollection as to the time, and that the ſaid Sir James Wallace, on his going aſhore there, left orders with this deponent that he might give any of the Officers belonging to the ſhip leave to go on ſhore in the day-time, but that they were to return at night, and ſleep on board, obſerving to this deponent, that, as the combined fleets were then out, ſome of their ſhips might come in there, and ſeize the ſaid ſhip the Warrior by ſurpriſe, which would be a great diſgrace to them; and this deponent ſaith, that he afterwards communicated the above orders to the ſeveral Officers belonging to the ſaid ſhip, and that the ſaid Charles Bourne expreſſed great diſſatisfaction, and murmured very much at the ſaid order, and for which this deponent told him he thought him highly blameable, and that their being permitted to go on ſhore whenever they pleaſed in the day-time was a great indulgence. And this deponent ſaith, that, on Saturday the 2d of February, according to the beſt of this deponent's recollection as to the time, the ſaid Charles Bourne and Mr. Markett, then the Third Lieutenant of the ſaid ſhip, went on ſhore with this deponent's leave, and that, before they left the ſhip, this deponent told them, that he would ſend off a boat for them in the evening before ſunſet, to bring them on board again, but this deponent ſaith that they did not return again to the ſhip until Monday following about noon. And this deponent ſaith, that he hath been informed and believes, that the ſaid Charles Bourne and Mr. Markett went to the theatre there on the Sunday evening, to ſee the comedy, and were in the pit with their hats on, and that a meſſage was ſent to them by the Governor of Madeira, who was then in the theatre, to deſire that they would take off their hats, it being the cuſtom there for the audience to ſit uncovered during the comedy; and that the ſaid Charles Bourne and Mr. Markett refuſing to take off their hats, a ſerjeant then on duty was ſent by the Governor to take their hats off, and that they were thereupon obliged to go out of the theatre, and afterwards got into diſorderly houſes, and ſeveral

ral riots and quarrels with the inhabitants, and that they were pelted with ſtones, and otherways very roughly treated by the inhabitants. And this deponent ſaith, that he hath been informed, and believes, that the ſaid Charles Bourne and Mr. Markett, or one of them, after they returned on board, wrote and ſent a letter to the ſaid Sir James Wallace, who was then aſhore at Mr. Murray's, the Britiſh Conſul's, thanking him for his polite introduction of them to the Governor of Madeira, and acknowledging themſelves indebted to him for the civilities and polite treatment which they had received from the inhabitants whilſt on ſhore. And this deponent ſaith, that the ſaid Sir James Wallace returned on board the ſaid ſhip the evening before ſhe ſailed from Madeira, and that he then ſhewed the ſaid letter to this deponent, and that the next morning, being the 7th of February, according to the beſt of deponent's recollection as to the time, ſoon after the Warrior had ſailed from Madeira, the ſaid Sir James Wallace deſired Major Varlo and this deponent to go into his cabin, and then ſent for the ſaid Charles Bourne and Mr. Markett into his cabin, and, after having ordered all the ſervants to go out, ſhewed the ſaid letter to the ſaid Mr. Bourne and Mr. Markett, in the preſence of Major Varlo and this deponent, who were the only perſons then in the cabin with them, and aſked them if the ſame was their writing; when the ſaid Charles Bourne ſaid, Yes, that it was; upon which the ſaid Sir James Wallace aſked him, what they meant by it, and whether they meant it as an inſult, and if they did, it was very ungentlemanlike behaviour for two of them to join in ſuch a note to him; when the ſaid Charles Bourne made anſwer, that they thought he had not uſed them well, for that, in conſequence of his not having taken proper notice of them on ſhore, and introduced them to the Governor of Madeira, they had been very ill-treated by the inhabitants; upon which the ſaid Sir James Wallace ſaid to them, that, if thoſe were their ſentiments, he and they could be no longer acquainted with each other, or words to that purport or effect. And this deponent poſitively ſaith, that the ſaid Sir James Wallace did not then, or at any other time that this deponent ever heard of, put the following or any other ſuch queſtion to the ſaid Charles Bourne, viz. "Why, if you thought yourſelf aggrieved or affronted, did you not call me out?" or uſe any other words to that or the like effect. And this deponent ſaith, that, from that time, various diſputes and diſſentions happened, and parties were formed amongſt the Officers of the ward-room, and which this deponent verily believes were occaſioned by the ſaid Charles Bourne, who endeavoured, as much as he could, to prejudice the minds of the Officers againſt the ſaid Sir James Wallace, and was, as this deponent believes, the cauſe of all the diſturbances which afterwards happened on board the ſaid ſhip. And this deponent further ſaith, that, between 10 and 11 o'clock in the night of the 24th of April, 1782, according to the beſt of this deponent's recollection as to the time, this deponent was with Sir James Wallace and Major Varlo, in Sir James Wallace's cabin, when, after ſome diſturbance which they heard in the ward-room, one of the ſervants of the ward-room brought up a meſſage to Sir James Wallace, to know if he had ordered the ward-room lights to be put out, upon which the ſaid Sir James Wallace deſired this deponent to go down into the ward-room, and enquire what was the matter there; and this deponent ſaith, that, upon going out of the cabin, he at the door met the boy who had brought up the meſſage, and aſked him who had ſent up the meſſage, when he told this deponent that Mr. Bourne had ordered him to come up with ſuch meſſage, in the name of the gentlemen of the ward-room; and this deponent ſaith, that, upon his entering the ward-room, he found the ſaid Mr. Bourne walking up and down, and ſeemingly in a great paſſion, and very much diſcompoſed; that this deponent then ſaw no other Officer belonging to the ward-room there and out of bed, according to the beſt of this deponent's recollection and belief; and, upon this deponent's aſking the ſaid Mr. Bourne what was the matter, and why he had ſent up ſuch a meſſage to the Captain, the ſaid Charles Bourne told this deponent, that Mr. Stephenſon the Second Lieutenant had uſed him very ill, and had ordered the ward-room lights to be put out, which occaſioned him to ſend up the ſaid meſſage to the Captain; upon which the ſaid Mr. Stephenſon, who was then in his cot in the ward-room, and perfectly ſober, (for this deponent ſaith, that he never remembers, during the whole time he was on board the Warrior, to have ſeen him intoxicated with liquor,) told this deponent, that the ſaid Charles Bourne had been making a very great noiſe and diſturbance, and that he the ſaid Mr. Stephenſon had deſired

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him to deſiſt, as he had the middle watch, and the ſaid Charles Bourne diſturbed and prevented him from going to ſleep, and that, as the ſaid Charles Bourne would not deſiſt, he the ſaid Mr. Stephenſon had ordered the ward-room lights to be put out, which had produced very abuſive language from the ſaid Charles Bourne, and an appointment to ſettle the buſineſs between them the next morning. And this deponent ſaith, that the ſaid Charles Bourne appeared to this deponent to be very much diſguſted, and made no reply to what the ſaid Mr. Stephenſon then told this deponent; and this deponent ſaith, that he went back to and informed the ſaid Sir James Wallace of the ſame, upon which he immediately ordered one of the ſervants to deſire Mr. Bourne to come up to him in his cabin, which the ſaid Charles Bourne accordingly did, when the ſaid Sir James Wallace aſked the ſaid Charles Bourne how he could ſend up a meſſage to him the ſaid Sir James Wallace, to know if he had ordered the ward-room lights to be put out, when he the ſaid Charles Bourne knew that the ſaid Sir James Wallace had given no ſuch orders; upon which the ſaid Charles Bourne ſaid, that he thought he was very ill-uſed by having the lights put out, and ſuppoſed that it had been done by the order of Sir James Wallace, which was the reaſon of his ſending up the ſaid meſſage; and the ſaid Sir James Wallace thereupon told the ſaid Charles Bourne, that he was a very troubleſome man, at which the ſaid Charles Bourne ſeemed very much diſpleaſed, and in a ſullen and diſſatisfied manner went out of the cabin muttering ſomething to himſelf. And this deponent ſaith, that no other perſon or perſons, except the ſaid Major Varlo and this deponent, were then with the ſaid Sir James Wallace in his cabin, and that neither the Maſter or the Surgeon of the ſaid ſhip were then or ever had been there that evening; for that the Maſter of the ſaid ſhip was then confined to his bed in the gun-room, from having loſt his leg, about a fortnight before that time, in the engagement between the Engliſh and French fleets, on the 12th of April, 1782: and this deponent ſaith, that he had ſpent the whole of that evening with the ſaid Sir James Wallace, in his cabin, and that Mr. Stephenſon, then the acting Second Lieutenant of the ſaid ſhip, had never been in the ſaid cabin during the whole of that night: and this deponent abſolutely denies, that the ſaid Charles Bourne, at the time that he came into the ſaid Sir James Wallace's cabin, or during any part of the time that he was there, repeated to the ſaid Sir James Wallace any meſſage from the gentlemen of the ward-room, with their reſpectful compliments, or any other meſſage whatſoever from them, or made any other anſwer or reply to the ſaid Sir James Wallace, or that the ſaid Sir James Wallace aſked any other queſtion of, or made any other reply to, the ſaid Charles Bourne, than as is herein before mentioned, according to the beſt of this deponent's recollection and belief. And this deponent ſaith, that Mr. Stephenſon, who ſucceeded the ſaid Mr. Markett as 2d Lieutenant of the ſaid ſhip, during the whole time that this deponent was on board the ſaid ſhip, behaved himſelf as a very ſober, regular, and good officer, and was not in the leaſt addicted to drinking or habits of intoxication; and that this deponent never heard, nor doth he know or believe, that the ſaid Mr. Stephenſon the next morning requeſted the gentlemen of the ward-room to attend, while he declared his concern for his behaviour the preceding evening to the ſaid Charles Bourne, or that the ſaid Mr. Stephenſon then declared that he was drunk, and ſorry for what had happened, and intreated the ſaid Charles Bourne's pardon and forgiveneſs; for this deponent ſaith, that if any ſuch thing had ever happened on board the ſaid ſhip, this deponent muſt have either ſeen or heard of the ſame. And this deponent ſaith, that the next day, as this deponent was walking on the ſtarboard ſide of the quarter-deck with the defendant Bourne and ſome other officers of the ſaid ſhip, Sir James Wallace was walking at the ſame time alone on the larboard ſide of the deck, and the ſaid Charles Bourne left this deponent, and croſſed over to the larboard ſide of the deck, and throwing his arms about in a ſwaggering geſturing manner, paſſed the ſaid Sir James Wallace once or twice in that manner, ſwinging his arms about, and that the ſaid Sir James Wallace ſtepped aſide on the midſhip grating, and called to this deponent, and ſaid, Mr. Spry, my orders are that Mr. Bourne does not walk with me, or words to that effect, and thereupon turned away from the ſaid Charles Bourne. And this deponent ſaith, that ſome time afterwards on the ſame day, whilſt the ſaid Sir James Wallace was upon the ſtarboard ſide of the quarter-deck, the ſaid Charles Bourne went up to him there, and aſked him if he meant to turn him off the deck, or confine him, to

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which the ſaid Sir James Wallace anſwered, No, but that, after having treated him with ſo much diſreſpect, he did not chuſe that he ſhould walk with him, or words to that purport or effect, and which were all the words, according to the beſt of this deponent's recollection and belief, which paſſed between the ſaid Sir James Wallace and the ſaid Charles Bourne. And this deponent ſaith, that, in about ſix days afterwards, the Warrior arrived at Jamaica; and this deponent poſitively ſaith, that he never ſaw or heard, nor doth he know or in his conſcience believe, that the ſaid Sir James Wallace, either then, or at any other time during the whole voyage of the ſaid ſhip the Warrior from England to Jamaica, ever came running out of his cabin, on ſeeing the ſaid Charles Bourne on the quarter-deck, with his fiſts clinched to the ſaid Charles Bourne's face, muttering the word ſcoundrel, or ever with his fiſts clinched in any manner whatſoever driving the ſaid Charles Bourne from ſide to ſide of the ſhip, as the ſaid Charles Bourne has moſt unjuſtly and untruly depoſed. And this deponent ſaith, that, during the whole of the voyage of the ſaid ſhip the Warrior from England to Jamaica, this deponent never ſaw, nor did he ever hear, nor doth he know or believe, that the ſaid Sir James Wallace ever made uſe of any abuſive, inſulting, or uncivil language to the ſaid Charles Bourne, or ever treated the ſaid Charles Bourne ill in any reſpect whatſoever, or that the ſaid Charles Bourne ever experienced from the ſaid Sir James Wallace any inſtances of inſult, outrage, abuſe, or unofficer-like behaviour. And this deponent ſaith, that if any ſuch thing had ever happened on board the ſhip, this deponent muſt have either ſeen or heard of the ſame, as he verily believes.

TS. SPRY.

Sworn at my chambers in Serjeants-Inn, the 1ſt day of July, 1783.

E. WILLES.

ROBERT FARRIS, of Ramſgate, in the county of Kent, Gent. a Lieutenant in his Majeſty's Royal Navy, maketh oath, and ſaith, That he was an officer belonging to and on board his Majeſty's ſhip called the Warrior, under the command of Sir James Wallace, from the time of the ſaid ſhip's ſailing on her voyage to the Weſt-Indies, in the beginning of the year 1782; until the time that the ſaid Sir James Wallace quitted the ſaid ſhip at Jamaica, ſome time in the beginning of July, 1782, on his being appointed to the command of his Majeſty's ſhip the Reſolution. And this deponent ſaith, that the defendant Charles Bourne was a Lieutenant of Marines embarked on board the ſaid ſhip the Warrior, and on board the ſaid ſhip at the time that the ſaid ſhip ſailed from Portſmouth as aforeſaid; and that the ſaid Charles Bourne continued on board the ſaid ſhip as a Lieutenant of Marines until a ſhort time after the engagement of the 12th of April, 1782, between his Majeſty's fleet under the command of Lord Rodney, and the French fleet under the command of the Count de Graſſe, when the ſaid Charles Bourne was ordered from the Warrior to go on board the Hector, one of the French ſhips captured in the ſaid engagement. And this deponent ſaith, that the ſeveral officers of and belonging to the ſaid ſhip called the Warrior, before and at the time that the ſaid Charles Bourne firſt embarked on board the ſaid ſhip, meſſed and lived together on board the ſaid ſhip in great friendſhip and cordiality, and that after the ſaid Charles Bourne had been ſome little time on board the ſaid ſhip, he began to create diſſentions and form parties amongſt the ſaid officers, and entered into diſputes and quarrels with ſome of the ſaid officers, and did not behave or conduct himſelf with that good order and diſcipline which officers on board his Majeſty's ſhips are accuſtomed to. And this deponent ſaith, that the ſaid ſhip the Warrior, on her ſaid voyage to the Weſt-Indies, touched at the iſland of Madeira, and that whilſt ſhe lay off the ſaid iſland the ſaid Sir James Wallace gave leave to the officers belonging to the ſaid ſhip to go aſhore in the day-time, but ordered them to return to and ſleep on board the ſhip every night, as the combined fleets of France and Spain were then at ſea, and there was a poſſibility of ſome of the cruiſing ſhips belonging to that fleet coming in upon them there in the night. And this deponent ſaith, that the ſaid Charles Bourne went aſhore with ſeveral other officers belonging to the ſaid ſhip, but that the ſaid Charles Bourne did not return to the ſhip with the other officers, but continued aſhore there two whole nights, contrary to the orders of the ſaid Sir James Wallace, and behaved in a very diſorderly manner whilſt he was ſo on ſhore; and that, after his return to the ſhip, he wrote and ſent a note

note or letter to the ſaid Sir James Wallace, thanking him for his polite introduction of the ſaid Charles Bourne to the Governor of Madeira, and inſinuating that he was indebted to the ſaid Sir James Wallace for the civilities he had received, and the polite treatment he had experienced, from the inhabitants there whilſt he was on ſhore, alluding, as this deponent believes, to his the ſaid Charles Bourne's having been turned or obliged to go out of the theatre for his improper behaviour there, as this deponent hath heard and believes. And this deponent further ſaith, that the ſaid Charles Bourne afterwards, between 10 and 11 o clock in the night of the 24th or 25th of April, according to the beſt of this deponent's recollection and belief as to the time, whilſt the ſaid ſhip the Warrior was on her paſſage to Jamaica, quarrelled very much with Mr Stephenſon, the Second Lieutenant of the ſaid ſhip, and who, as this deponent believes, is now on board the ſaid ſhip in the Weſt-Indies, and which quarrel was begun and occaſioned by the ſaid Charles Bourne's making a very great noiſe in the ward-room, which prevented the ſaid Mr. Stephenſon, who was then in bed, and was to turn out to keep the middle watch, from ſleeping. And this deponent ſaith, that the ſaid Mr. Stephenſon ſeveral times deſired the ſaid Charles Bourne not to make ſo great a noiſe, for that it was impoſſible for him to ſleep; but that the ſaid Charles Bourne, diſregarding ſuch requeſt, continued to make the ſame or a greater noiſe, and that the ſaid Mr. Stephenſon, who was then the chief officer in the ward-room, ordered the ward-room lights to be put out, which was no ſooner done, than the ſaid Charles Bourne began to make uſe of very groſs and abuſive language to the ſaid Mr. Stephenſon, and the ſaid quarrel was carried ſo far as to produce a challenge between them; and that the ſaid Charles Bourne, during ſuch quarrel, ordered one of the ſervants in the ward-room to go up to the captain, meaning the ſaid Sir James Wallace, and aſk him if he had ordered the ward-room lights to be put out, though the ſaid Charles Bourne then very well knew that the ſaid lights had been put out by the order of the ſaid Mr. Stephenſon. And this deponent ſaith, that, ſoon after the ſaid Charles Bourne had ſent up ſuch meſſage to the ſaid Sir James Wallace, Mr. Thomas Spry, the Firſt Lieutenant of the Warrior, and who is now on board his Majeſty's ſhip the Barfleur, in the Weſt-Indies, as this deponent believes, came down into the ward-room, and enquired into the cauſe of the noiſe and diſturbance which was made there, and what the ſaid Charles Bourne meant by the meſſage which he had ſent up to Sir James Wallace, about the putting out the ward room lights, when the ſaid Mr. Stephenſon informed the ſaid Mr. Spry of all that had happened between him the ſaid Mr. Stephenſon and the ſaid Charles Bourne, and that the ſaid Charles Bourne knew when he ſent up the ſaid meſſage to the ſaid Sir James Wallace, that he the ſaid Mr. Stephenſon had ordered the ward-room lights to be put out. And this deponent further ſaith, that ſoon after the ſaid Mr. Spry had left the ward-room, one of the Captain's ſervants came down with a meſſage for Mr. Bourne to go up into the Captain's cabin, which he accordingly did, and ſoon afterwards returned again into the ward-room, when he kept walking up and down for ſome time, muttering and talking to himſelf. And this deponent further ſaith, that the next day, whilſt this deponent was walking on the quarter-deck near the ſaid Sir James Wallace, the ſaid Charles Bourne came upon the ſame ſide of the quarter-deck, and in a very ſwaggering way bruſhed paſt the ſaid Sir James Wallace, and ſtared in his face in a very daring and inſulting manner, upon which Sir James Wallace called to Mr. Spry, the Firſt Lieutenant, who was then walking on the oppoſite ſide of the deck, and ſaid to him, Mr. Spry, my orders are that Mr. Bourne does not walk with me, or to that effect, and which were all or the only words, according to the beſt of this deponent's recollection and belief, that were then ſpoken by the ſaid Sir James Wallace to the ſaid Charles Bourne; and that the ſaid Charles Bourne thereupon quitted the quarter deck, and went down into the ward-room, as this deponent verily believes. And this deponent poſitively ſaith, that he doth not know or believe, that the ſaid Sir James Wallace ever treated the ſaid Charles Bourne with any inſolence or abuſe, during the whole time that he was under his command on board the ſaid ſhip the Warrior.

ROBT. FARRIS.

Sworn in Court, 2d June, 1783,

By the Court.

ROBERT

ROBERT FARRIS, of Ramſgate, in the county of Kent, Gent. a Lieutenant in his Majeſty's Navy, maketh oath, and ſaith, That, for ſome time before, and at the time of the quarrel between the defendant Charles Bourne and Mr. Stephenſon, the Second Lieutenant of his Majeſty's ſhip the Warrior, and before the ward-room lights were put out, as mentioned in the affidavit made by this deponent in this cauſe on the 2d day of June inſtant, the ſaid Mr. Stephenſon was in his bed in the ward-room, and that he had ſupped that evening before he went to bed with the meſs in the ward-room, and was not intoxicated with liquor, as this deponent verily believes; for this deponent ſaith, that the ſaid Mr. Stephenſon is a very ſober quiet man, and this deponent doth not remember or believe that he then, or at any other time, behaved with great rudeneſs and impropriety to any of the officers belonging to the ſaid ſhip, or had then any quarrel with any other perſon (except the ſaid Charles Bourne), and that the ſaid quarrel was begun and occaſioned by the ſaid Charles Bourne only, after the ſaid Mr. Stephenſon was in bed; and that the meſſage thereupon ſent to the ſaid Sir James Wallace was ſo ſent by the ſaid Charles Bourne alone, and in his own name, and not by the gentlemen of the ward-room, who were not at all concerned in any manner in the ſaid quarrel, nor did they ſend their reſpectful compliments to the ſaid Sir James Wallace, and requeſt him to order the ſaid candles to be lighted again. And this deponent ſaith, that it was impoſſible that the maſter of the ſaid ſhip could be in the ſaid Sir James Wallace's cabin at the time that he then ſent for the ſaid Charles Bourne into his cabin, for that the Maſter of the ſaid ſhip had loſt his leg in the engagement on the 12th day of the ſaid month of April, and was then confined to his bed in a cabin in the gun-room: and this deponent doth not believe that the ſurgeon of the ſaid ſhip was then in the ſaid Sir James Wallace's cabin, as he was at that time ill, and in his own cabin, as this deponent verily believes. And this deponent ſaith, that he never heard, nor doth he know or believe, that the next morning the ſaid Mr. Stephenſon requeſted the gentlemen of the ward-room to attend, whilſt he declared his concern for his behaviour to the ſaid Charles Bourne; or that he declared that he was drunk (which this deponent does not believe), and that he was ſorry for what had happened, and intreated the ſaid Charles Bourne's pardon and forgiveneſs, and which this deponent ſaith he muſt have heard if any ſuch thing had ever happened. And this deponent ſaith, that he was upon the larboard ſide of the quarter-deck near the grating, on the next day, at the time that the ſaid Sir James Wallace gave orders to Mr. Spry that the ſaid Charles Bourne ſhould not walk with him, and that this deponent was then within a few paces of the ſaid Sir James Wallace; and this deponent ſaith, that the ſaid Sir James Wallace had been walking there ſome time, and that the ſaid Charles Bourne had been walking on the oppoſite ſide of the quarter-deck, with Mr. Monke, the Fourth Lieutenant of the ſaid ſhip, and croſſed over from him to the larboard ſide of the quarter-deck, with an intention, as appeared to this deponent from his behaviour, to offer ſome ſort of inſult to the ſaid Sir James Wallace: and this deponent abſolutely denies, that the ſaid Sir James Wallace then came running out of his cabin, in a violent manner, with his fiſts clinched to the ſaid Charles Bourne's face, muttering the word ſcoundrel; for this deponent ſaith, that he was then ſo near to the ſaid Sir James Wallace, that, if he had muttered or ſpoken any ſuch word, this deponent muſt have heard the ſame: and this deponent ſaith, that they were not at ſea for two or three weeks after that time; for that they arrived at Jamaica on the 30th of April, which was about ſix days afterwards. And this deponent ſaith, that, during the whole voyage of the ſaid ſhip the Warrior from England to Jamaica, and during all the time that the ſaid Charles Bourne continued on board or belonged to the ſaid ſhip, this deponent never ſaw, nor did he ever hear, nor doth he know or believe, that the ſaid Sir James Wallace ever treated the ſaid Charles Bourne ill in any reſpect whatſoever, or ever made uſe of any abuſive, inſulting, or improper language to the ſaid Charles Bourne, or that the ſaid Charles Bourne ever experienced from the ſaid Sir James Wallace any inſtances of inſult, outrage, and unofficer-like behaviour; or that the ſaid Sir James Wallace ever, on obſerving the ſaid Charles Bourne on the quarter-deck, came out of his cabin with his fiſts clinched in a menacing and provoking manner, driving the ſaid Charles Bourne from ſide to ſide of

the ſhip; and this deponent ſaith, that he verily believes, if any ſuch thing had ever happened on board the ſaid ſhip, this deponent ſhould either have ſeen or heard of the ſame.

ROBT. FARRIS.

Sworn at Weſtmr.-Hall,
24th June, 1783.
F. BULLER.

JAMES WALLIS, of Deptford, in the county of Kent, Shipwright, late Carpenter of his Majeſty's ſhip the Warrior, and now Carpenter of his Majeſty's ſhip the Orion, and JOSEPH MOORE, of Newcourt, Coleman-ſtreet, London, Mariner, late acting Schoolmaſter on board his Majeſty's ſhip the Warrior under the command of the above-named Sir James Wallace, jointly and ſeverally make oath, and ſay, That this deponent James Wallis was the carpenter of the ſaid ſhip the Warrior, and that this deponent Joſeph Moore was the acting ſchoolmaſter on board the ſaid ſhip the Warrior, at the time that ſhe ſailed from Portſmouth on a voyage to the Weſt Indies, in the month of January, 1782, and that they and each of them continued in ſuch their reſpective ſtations on board the ſaid ſhip until the month of July following, when this deponent James Wallis was removed from the ſaid ſhip, then at Jamaica, as an invalid, to return to Europe, and this deponent Joſeph Moore was removed to his Majeſty's ſhip the Reſolution, upon the ſaid Sir James Wallace being appointed to the command of that ſhip: and both theſe deponents ſay, that the defendant Charles Bourne was the Firſt Lieutenant of Marines on board the ſaid ſhip the Warrior, at the time that ſhe ſailed from Portſmouth, and that he continued on board the ſaid ſhip until after the engagement of the 12th of April, 1782, between the Engliſh and French fleets, when he was ordered by Lord Rodney at Jamaica on board the Hector, one of the French ſhips taken in that engagement. And theſe deponents ſay, that, whilſt his Majeſty's ſhip the Warrior was laying in the road off Madeira, in her voyage to the Weſt Indies, the ſaid Sir James Wallace gave orders that no officer belonging to the ſaid ſhip ſhould be abſent from the ſhip during the night, but gave them leave to go on ſhore every day. And both theſe deponents ſay, that the defendant Charles Bourne went on ſhore one morning, and did not return to the ſhip for two nights; and this deponent Joſeph Moore, for himſelf ſeverally ſaith, that the ſaid Charles Bourne got into ſeveral quarrels with the inhabitants there, and was ill-treated by them, as this deponent hath been informed and believes. And both theſe deponents ſay, that, after the ſaid Charles Bourne returned on board the ſaid ſhip the Warrior, he complained of the ill-treatment that he had received from the inhabitants whilſt he was on ſhore, and attributed the ſame to the ſaid Sir James Wallace, for his not having introduced him as a Britiſh Officer to the Governor of Madeira. And this deponent Joſeph Moore for himſelf ſeverally ſaith, that, one day, on the ſaid ſhip's paſſage to Jamaica, as the ſaid Sir James Wallace was walking upon the larboard ſide of the quarter-deck, this deponent, who was then on the ſtarboard ſide of the quarter deck, ſaw the ſaid Charles Bourne walk up to the ſaid Sir James Wallace in a very geſturing and inſulting manner, throwing his arms about, and looking the ſaid Sir James Wallace in the face as he paſſed him; and that the ſaid Charles Bourne afterwards returned back in the ſame manner; and that the ſaid Sir James Wallace, in order, as appeared to this deponent, to avoid being inſulted, or ſhoved by the ſaid Charles Bourne, ſtepped aſide on the midſhip grating, to let the ſaid Charles Bourne paſs him. And this deponent ſaith, that the ſaid Sir James Wallace did not then come running out of his cabin in a violent manner with his fiſts clinched to the ſaid Charles Bourne's face, nor did the ſaid Sir James Wallace then make uſe of any abuſive or ill language to the ſaid Charles Bourne, or treat him with any kind of menacing or rudeneſs whatſoever. And both theſe deponents ſay, that they never ſaw nor heard, nor do they know or believe, that the ſaid Sir James Wallace ever treated the ſaid Charles Bourne ill in any reſpect whatſoever during any part of the time that he was on board his Majeſty's ſaid ſhip the Warrior, and under the command of the ſaid Sir James Wallace; or that the ſaid Charles Bourne, during the voyage of the Warrior from England to Jamaica, experienced from Sir James Wallace any inſtances of inſult, outrage, and unofficer-like behaviour; or that the ſaid Sir James

Wallace

Wallace frequently, or ever, when he ſaw the ſaid Charles Bourne upon the quarter-deck, did go out of his cabin with his fiſts clinched, in a menacing and provoking manner, driving the ſaid Charles Bourne from ſide to ſide of the ſaid ſhip; and both theſe deponents ſay, that, if the ſaid Sir James Wallace had ever treated the ſaid Charles Bourne, whilſt he was on board the ſaid ſhip the Warrior, and under the command of the ſaid Sir James Wallace, in any abuſive, inſulting, menacing, or unofficer-like manner, theſe deponents muſt either have ſeen or heard of the ſame, or ſome part thereof, which theſe deponents, or either of them, never did. And both theſe deponents ſay, that they have frequently heard the ſaid Charles Bourne, whilſt he was on board the ſaid ſhip, ſpeak many very diſreſpectful words of the ſaid Sir James Wallace to different perſons belonging to the ſaid ſhip, reflecting upon the conduct and honour of the ſaid Sir James Wallace, and tending to prejudice the minds of the Officers and other perſons belonging to the ſaid ſhip againſt the ſaid Sir James Wallace. And both theſe deponents ſay. that, during the time that the ſaid Charles Bourne was on board the ſaid ſhip the Warrior, he had frequent diſputes and quarrels with many of the Officers belonging to the ſaid ſhip, and, as theſe deponents verily believe, prevailed upon Mr. Markett, the Third Lieutenant, and Mr. Monke, the Fourth Lieutenant, of the ſaid ſhip, to join him, the ſaid Charles Bourne, in oppoſition to the reſt of the Officers of the ſaid ſhip. And this deponent Joſeph Moore for himſelf ſeverally ſaith, that, ſoon after the arrival of the ſaid ſhip the Warrior at Jamaica, and before the ſaid Charles Bourne was ordered by Lord Rodney from on board the ſaid ſhip to the Hector, this deponent, on going one day into the ward-room to ſpeak to Mr. Monke, the Fourth Lieutenant of the Warrior, diſcovered the defendant Charles Bourne, and the ſaid Mr. Markett, and George Paris Monke, in cloſe conference together, upon a paper-writing which the ſaid Charles Bourne was then reading to the ſaid Mr. Markett and Mr. Monke, who were making their remarks upon the ſame, and which, from ſo much as this deponent then heard thereof, contained reflections upon the ſaid Sir James Wallace and his conduct on board the ſaid ſhip. And both theſe deponents further ſay, that, during the whole time that the ſaid Charles Bourne continued on board the ſaid ſhip the Warrior, he was very much elated with pride, greatly diſſatisfied with all the Officers of the ſhip, (except the ſaid Mr. Markett and George Paris Monke,) impatient of contradiction, and abounding in malice and reſentment, and that he did not behave (in many other reſpects) with that good order and diſcipline which is obſerved by Officers on board his Majeſty's ſhips of war; and theſe deponents verily believe, that, if the ſaid Sir James Wallace had brought the ſaid Charles Bourne to a Court-Martial for his improper conduct, either at St. Lucia or Jamaica, that the ſaid Charles Bourne would have been broke for the ſame.

JAMS. WALLIS.
JOSEPH MOORE.

Both ſworn at my chambers in Serjeants-Inn, the 21ſt June, 1783, before me
F. BULLER.

BENJAMIN MAITLAND, Maſter's Mate of and belonging to his Majeſty's ſhip the Warrior, maketh oath, and ſaith, That he was an officer on board the ſaid ſhip at the time that ſhe ſailed from Portſmouth to the Weſt-Indies, under the command of Sir James Wallace, in January, 1782, and hath ever ſince been, and now is, an officer belonging to the ſaid ſhip. And this deponent ſaith, that the defendant Charles Bourne was the Firſt Lieutenant of Marines embarked on board the ſaid ſhip at the time of her ſailing from Portſmouth as aforeſaid, and that he continued on board the ſaid ſhip until after her arrival at Jamaica, when he was ordered from on board the Warrior to the Hector, one of the French prizes taken on the 12th of April, 1782. And this deponent ſaith, that, during the whole voyage of the ſaid ſhip the Warrior from England to Jamaica, and during all the time that the ſaid Charles Bourne continued on board or belonged to the ſaid ſhip, this deponent never ſaw, nor did he ever hear, nor doth he know or believe, that the ſaid Sir James Wallace ever treated the ſaid Charles Bourne ill in any reſpect whatſoever, or ever made uſe of any abuſive, inſulting, or improper language to the ſaid Charles Bourne, or that the ſaid Charles Bourne ever experienced from the ſaid Sir James Wallace any inſtances of inſult, outrage, and an unofficer like behaviour, or that the ſaid Sir James Wallace ever,

ever, on obſerving the ſaid Charles Bourne on the quarter-deck, came out of his cabin with his fiſts clinched in a menacing and provoking manner, driving the ſaid Charles Bourne from ſide to ſide of the ſhip. And this deponent ſaith, that he verily believes, if any ſuch thing had ever happened on board the ſaid ſhip, this deponent ſhould either have ſeen or heard of the ſame. And this deponent ſaith, that, on the 24th of April, 1782, according to the beſt of this deponent's recollection and belief as to the time, and which this deponent believes was the day after the ſaid Charles Bourne had a quarrel with Mr. Stephenſon the Second Lieutenant of the ſaid ſhip, for ordering the ward-room lights to be put out, this deponent was upon the quarter-deck, within a few paces of the ſaid Sir James Wallace, who was then walking on the quarter-deck, and that, whilſt the ſaid Sir James Wallace was walking there, the defendant Charles Bourne came upon the ſame ſide of the quarter-deck, and walked up to and paſſed the ſaid Sir James Wallace two or three times, upon which the ſaid Sir James Wallace called to Mr. Spry, the Firſt Lieutenant of the ſaid ſhip, who was then on the oppoſite ſide of the deck, and told the ſaid Mr. Spry, that his the ſaid Sir James Wallace's orders were, that Mr. Bourne ſhould not walk with him, or words to that purport or effect, according to the beſt of this deponent's recollection and belief; upon which the ſaid Charles Bourne turned round, and made ſome ſhort reply to the ſaid Sir James Wallace, and then quitted the quarter-deck; but this deponent poſitively ſaith, that the ſaid Sir James Wallace did not come running out of his cabin at the time that the ſaid Charles Bourne ſo came upon the quarter-deck, in a violent manner, with his fiſts clinched to the ſaid Charles Bourne's face, for that the ſaid Sir James Wallace had been walking on the quarter-deck for ſome time before, and was walking there when the ſaid Charles Bourne came upon the quarter-deck. And this deponent poſitively ſaith, that the ſaid Sir James Wallace did not then, or at any other time that this deponent ever ſaw or heard, clinch his fiſts to the face of the ſaid Charles Bourne in any manner whatſoever. And this deponent ſaith, that, on or about the 30th of April, being about ſix days afterwards, the ſaid ſhip the Warrior arrived at Jamaica, and the ſaid Charles Bourne was ſoon afterwards ordered by Lord Rodney from the Warrior on board the Hector.

BEN^N. MAITLAND.

Sworn at my chambers in Serjeants-Inn, 21ſt day of June, 1783, before
F. BULLER.

JAMES MENDENALL, of the city of Bath, in the county of Somerſet, yeoman, maketh oath, and ſaith, That he this deponent, in the month of December laſt, was and ſtill is a waiter at the White-Hart inn, in the ſaid city of Bath, and that, in the evening of the 5th day of December laſt, a gentleman, who was then unknown to this deponent, but whoſe name, as this deponent was the next day informed by him and believes, is Bourne, and who, as this deponent alſo believes, is a Lieutenant of Marines, and the defendant in this cauſe, came to the White-Hart inn aforeſaid, in one of the London coaches, as this deponent believes, and that he ſpent that evening in the public coffee-room of the ſaid inn. And this deponent ſaith, that, between ten and eleven o'clock the next morning, the ſaid Mr. Bourne ſtopt this deponent in the lobby of the ſaid inn, and ſaid to this deponent, "You ſeem "to be an intelligent man, and a fit perſon for a "very particular buſineſs in which I want to em-"ploy you"; and he thereupon took this deponent into a parlour adjoining to the coffee-room, and there aſked this deponent, if he this deponent knew where Sir James Wallace lodged? to which this deponent anſwered, that he did not; and the ſaid Charles Bourne then told this deponent, that the ſaid Sir James Wallace lodged at a Mr. Plura's, in Melſom-ſtreet, and deſired this deponent to go to him there, and tell him that a gentleman at the White-Hart wiſhed to ſpeak to him the ſaid Sir James Wallace: and this deponent ſaith, that the ſaid Charles Bourne particularly deſired that this deponent would not deliver the ſaid meſſage to any ſervant of the ſaid Sir James Wallace, but that he would ſee the ſaid Sir James Wallace, and deliver it to himſelf. And this deponent ſaith, that he accordingly went immediately to the ſaid Sir James Wallace's lodgings, in Melſom-ſtreet aforeſaid, and delivered the ſaid meſſage to him whilſt he was in his dining-room there with Lady Wallace, as this deponent believes. And this deponent ſaith, that the ſaid Sir James Wallace then

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aſked this deponent the name of the gentleman, what ſort of a perſon he was, and whether he looked like an officer; and this deponent informed the ſaid Sir James Wallace, that he did not know the gentleman's name, nor who he was, but told the ſaid Sir James Wallace that he had a foreign ſervant with him, as this deponent believes. And this deponent ſaith, that he doth not recollect that the ſaid Sir James Wallace then returned any direct anſwer to the ſaid meſſage of the ſaid Charles Bourne, whether he would or would not go to the White-Hart inn; but this deponent ſaith, that he this deponent returned to the ſaid Charles Bourne, and informed him that he had delivered his ſaid meſſage to the ſaid Sir James Wallace, upon which the ſaid Charles Bourne ſeemed very much confuſed, and deſired this deponent to ſhew him into a private room, and this deponent accordingly conducted him into a room up one pair of ſtairs in the ſaid inn, adjoining to the room where the ſaid Charles Bourne had ſlept the preceding night, and where this deponent left him alone. And this deponent ſaith, that the ſaid Charles Bourne deſired this deponent to ſhew the ſaid Sir James Wallace into the ſame room as ſoon as he came to the ſaid inn; and this deponent alſo ſaith, that, very ſoon afterwards, a man, who, as this deponent believes, was a ſervant to Captain Webber, who was then at Bath, brought a ſword to the White-Hart inn, and delivered the ſame to this deponent, and deſired this deponent to take the ſaid ſword into Mr. Bourne's room; and this deponent ſaith, that he accordingly carried and left the ſaid ſword in the ſaid Mr. Bourne's bed-room, adjoining to the room where the ſaid Mr. Bourne was then waiting for the ſaid Sir James Wallace: and this deponent further ſaith, that, after the ſaid Charles Bourne had waited about half an hour in the ſaid room, in expectation that the ſaid Sir James Wallace would come to him, the ſaid Charles Bourne looked over the banniſters of the ſtair-caſe, and deſired this deponent, who was then in the lobby, to go up to him, and this deponent accordingly went up, and followed the ſaid Charles Bourne into the room: And this deponent ſaith, that the ſword, which a little before had been delivered to this deponent by the ſaid Captain Webber's ſervant, and left by this deponent in the ſaid Charles Bourne's bed-room, was then lying upon one of the ſide-tables in the room where the ſaid Charles Bourne then was, and the ſaid Charles Bourne then appeared to this deponent to be very much agitated, and deſired this deponent to go again to the ſaid Sir James Wallace, to know whether he would come or not; and this deponent ſaith, that he accordingly went again to the ſaid Sir James Wallace's lodgings, and delivered the ſaid meſſage to the ſaid Sir James Wallace, who again aſked this deponent the gentleman's name, which this deponent told the ſaid Sir James Wallace the gentleman would not ſend, but deſired to know whether he the ſaid Sir James Wallace would come or not: upon which the ſaid Sir James Wallace ſaid, that he certainly ſhould not go to any gentleman whoſe name he did not know, or who would not ſend his name, or to that effect, according to the beſt of this deponent's remembrance and belief, and which anſwer this deponent delivered to the ſaid Charles Bourne, who immediately, with very great warmth, told this deponent to go back, and tell the ſaid Sir James Wallace, that his name was Bourne; and this deponent ſaith, that he accordingly went back again to the ſaid Sir James Wallace, and told him that the gentleman's name was Bourne; upon which the ſaid Sir James Wallace ſaid, that he had no buſineſs with that gentleman, which anſwer this deponent carried back, and delivered to the ſaid Charles Bourne, who ſaid, "No buſineſs with me, has he," and immediately went out of the houſe in a very great rage and paſſion. And this deponent ſaith, that the ſaid Charles Bourne ſoon afterwards returned again to the ſaid inn, and wrote a letter to the ſaid Sir James Wallace, which he deſired this deponent to take to the ſaid Sir James Wallace's lodgings; and this deponent aſked the ſaid Charles Bourne, if he this deponent was to wait for an anſwer to the ſaid letter, when the ſaid Charles Bourne informed this deponent that the ſaid letter did not require any anſwer; and this deponent thereupon carried the ſaid letter, and delivered it to one of the ſervants at the ſaid Sir James Wallace's lodgings. And this deponent ſaith, that he doth not remember that he ever ſaw any perſon in his life more agitated than the ſaid Charles Bourne appeared to be at the ſeveral times that he deſired this deponent to carry ſuch meſſages as aforeſaid to the ſaid Sir James Wallace, and at the times that this deponent returned to him again with the ſaid Sir James Wallace's anſwers. And this deponent ſaith, that the ſaid Charles

Bourne never intimated to this deponent the buſineſs upon which he wanted the ſaid Sir James Wallace, but upon this deponent's reflecting upon the whole of the ſaid Charles Bourne's behaviour, and the danger that the ſaid Sir James Wallace would have been in, if he had gone to the ſaid Charles Bourne, as the ſaid Charles Bourne had a brace of piſtols with him there, as well as the ſword which had been ſo brought for him by the ſaid Captain Webber's ſervant as aforeſaid, this deponent was very much concerned that he had not intimated to the ſaid Sir James Wallace his this deponent's ſuſpicions of the ſaid Charles Bourne's intentions againſt the ſaid Sir James Wallace, and cautioned him againſt going to the ſaid Charles Bourne; and this deponent apprehends, and verily believes, that ſome fatal conſequences would have enſued, if the ſaid Sir James Wallace had gone to the ſaid Charles Bourne upon any of the ſaid meſſages which were ſo carried to him by this deponent from the ſaid Charles Bourne as aforeſaid. And this deponent ſaith, that the ſaid Charles Bourne afterwards went away from the ſaid inn about 4 o'clock in the morning of the 9th of December, in one of the London coaches, as this deponent believes; and that between the time of this deponent's carrying the aforeſaid letter from the ſaid Charles Bourne to the ſaid Sir James Wallace, and the ſaid Charles Bourne's leaving the White-Hart inn as aforeſaid, the ſaid Charles Bourne, at different times, frequently, and publickly, both in the coffee-room and other parts of the ſaid inn, ſpoke many very diſreſpectful words of the ſaid Sir James Wallace to different perſons that came into, or were in, the ſaid inn, reflecting very much upon the character and courage of the ſaid Sir James Wallace, and tending to prejudice the minds of ſuch perſons againſt the ſaid Sir James Wallace.

JAMES MENDENALL.

Sworn at Weſtminſter-Hall,
3d June, 1783.
F. BULLER.

PETER DUPUY ABBOTT, of New North-ſtreet, near Red-Lion-ſquare, in the county of Middleſex, gentleman, (a Lieutenant in his Majeſty's royal navy,) maketh oath, and ſaith, That he this deponent was the Firſt Lieutenant of, and on board, his Majeſty's ſhip of war the Reſolution, and that, in or about the beginning of the month of July, 1782, Sir James Wallace, who then commanded his Majeſty's ſhip the Warrior, was appointed to the command of the Reſolution, both which ſhips were then lying off Port Royal, in Jamaica. And this deponent ſaith, that his Majeſty's ſaid ſhip the Reſolution afterwards ſailed from Port Royal for England, on or about the 22d day of July, 1782, and arrived at Portſmouth on or about the 26th day of September following, under the command of the ſaid Sir James Wallace. And this deponent ſaith, that he afterwards went to Bath, where he was in the beginning of December laſt, and that in the evening of Friday the 6th day of December laſt, according to the beſt of this deponent's recollection as to the time, whilſt this deponent was in the lower rooms at Bath, he was accoſted by the defendant Charles Bourne, who aſked this deponent if he the ſaid Charles Bourne had not had the pleaſure of ſeeing this deponent in the Weſt-Indies, to which this deponent anſwered he believed he might, but this deponent could not then recollect at what time or place in particular he had ſo ſeen him, as this deponent never had any acquaintance with the ſaid Charles Bourne. And this deponent ſaith, that the ſaid Charles Bourne then aſked this deponent what ſhip this deponent belonged to, and how long he had been arrived from the Weſt-Indies, when this deponent informed the ſaid Charles Bourne, that he this deponent belonged to, and came home in, the Reſolution; and the ſaid Charles Bourne then ſaid to this deponent, You then know the gallant Knight Sir James Wallace, pray how do you like him? to which this deponent replied, that he liked him very well; and the ſaid Charles Bourne, expreſſing ſome ſurpriſe thereat, told this deponent, that he the ſaid Charles Bourne had ſerved on board the Warrior whilſt that ſhip was under the command of the ſaid Sir James Wallace, and that the ſaid Sir James Wallace had uſed him the ſaid Charles Bourne very ill whilſt he was under his command, and that he the ſaid Charles Bourne was then come to Bath on purpoſe to call the ſaid Sir James Wallace to an account for the ſame, or expreſſed himſelf to that purport or effect; but the ſaid Charles Bourne did not inform this deponent in what manner, or on what account,

count, or at what place, the ſaid Sir James Wallace had ſo uſed him very ill, but made uſe of many ſcandalous words and expreſſions reflecting upon the conduct and character of the ſaid Sir James Wallace; and this deponent therefore reſolved to wait upon the ſaid Sir James Wallace the next morning, and inform him of the ſame, as this deponent knew that the ſaid Sir James Wallace intended to leave Bath on the day following. And this deponent ſaith, that the next morning this deponent met the ſaid Sir James Wallace walking in the Creſcent, and aſked him if he had ſeen the ſaid Charles Bourne, when the ſaid Sir James Wallace informed this deponent, that the ſaid Charles Bourne had the day before ſent a waiter from the White-Hart inn to him the ſaid Sir James Wallace, with a verbal meſſage that a gentleman at the White-Hart wanted to ſpeak to him the ſaid Sir James Wallace, without ſending any name; and that, on his the ſaid Sir James Wallace's having ſent back the waiter to enquire the gentleman's name, the ſame waiter had returned, and told him the ſaid Sir James Wallace that the gentleman did not chuſe to ſend his name, but deſired to know whether he the ſaid Sir James Wallace would go to him there or not; and that, on his the ſaid Sir James Wallace having returned for anſwer that he certainly would not go to any one aſhamed of telling his name, the ſaid Charles Bourne had ſent back the ſaid waiter a third time, to inform the ſaid Sir James Wallace that the gentleman's name was Bourne; and that, on the ſaid Sir James Wallace's having returned for anſwer that he had no buſineſs with that gentleman, the ſaid Mr. Bourne had ſent him a very abuſive letter, which had induced him the ſaid Sir James Wallace to believe that the ſaid Charles Bourne intended to have a private rencontre with him; and that, in order to be prepared, in caſe the ſaid Charles Bourne ſhould attack him, he the ſaid Sir James Wallace had that morning been walking in the public ſtreets and places of Bath, with his piſtols in his pocket; and that the ſaid Charles Bourne had met the ſaid Sir James Wallace a little before this deponent joined the ſaid Sir James Wallace in the ſtreet, where the ſaid Sir James Wallace lodged, and that on the ſaid Charles Bourne's going up to the ſaid Sir James Wallace, and beginning to ſpeak to him, the ſaid Sir James Wallace had told him that he could have no converſation with him, but to ſend his friend and propoſe his terms, and that he the ſaid Sir James Wallace was provided for him, and had ſhewn him one of his piſtols, and told him, that, if he the ſaid Charles Bourne attempted to inſult him, he would put him to death, and that the ſaid Charles Bourne thereupon went away abuſing him the ſaid Sir James Wallace; and that he the ſaid Sir James Wallace then expected to receive a meſſage from the ſaid Charles Bourne in conſequence of what he had ſo ſaid to him, and deſired this deponent would accompany him, in caſe he ſhould have occaſion to meet the ſaid Charles Bourne in conſequence of any meſſage which the ſaid Sir James Wallace might receive from the ſaid Charles Bourne, which he this deponent promiſed to do. And this deponent ſaith, he afterwards walked about the ſtreets in Bath with the ſaid Sir James Wallace for a conſiderable time; and this deponent ſaith, that, after having walked about with the ſaid Sir James Wallace for ſome time, the ſaid Sir James Wallace deſired this deponent to dine with him, which this deponent believes the ſaid Sir James Wallace did, with a view of having this deponent to be a witneſs of his conduct upon his receiving any meſſage from the ſaid Charles Bourne. And this deponent ſaith, that he afterwards went home to dreſs, and, on his going to the ſaid Sir James Wallace's to dinner, the ſaid Sir James Wallace informed this deponent, that ſince they had parted he the ſaid Sir James Wallace had received a letter from the ſaid Charles Bourne, which the ſaid Sir James Wallace then gave to and deſired this deponent to read, and aſked this deponent in what light he conſidered the ſaid letter, when this deponent told the ſaid Sir James Wallace, that, in the opinion of this deponent, the ſaid letter contained nothing but ſcandalous abuſe, and ſeemed to this deponent to have been written by the ſaid Charles Bourne with an intent to provoke the ſaid Sir James Wallace to ſend a challenge to the ſaid Charles Bourne; and the ſaid Sir James Wallace ſaid, that he perceived that the ſaid Charles Bourne meant nothing but abuſe, without coming to a point, and that he therefore did not think it worth his while to detain his family any longer at Bath, and that as he had arranged all his

his matters with a view of leaving Bath the next day, he would not ſtay there any longer on account of the ſaid Charles Bourne. And this deponent ſaith, that, about noon the next day, being Sunday, the 8th day of December, the ſaid Sir James Wallace and his family left Bath, and that in the evening of the ſame day this deponent called at the White-Hart inn, and inquired if the ſaid Charles Bourne was there, and that the ſaid Charles Bourne, who was then in a room which opened into the paſſage where this deponent was ſtanding at the time that he made the ſaid inquiry, and who, as this deponent believes, heard this deponent make ſuch inquiry, or ſaw this deponent go into the ſaid inn, immediately came out into the paſſage, and told this deponent that he the ſaid Charles Bourne took it very kind in this deponent's calling upon him there, and deſired this deponent to walk into the room, when this deponent told the ſaid Charles Bourne that he this deponent wiſhed to be informed by the ſaid Charles Bourne of ſome of the particulars that had happened between him and the ſaid Sir James Wallace, as this deponent had heard that he the ſaid Charles Bourne had been calling the ſaid Sir James Wallace a coward, a name which this deponent knew the ſaid Sir James Wallace did not deſerve, and that he the ſaid Charles Bourne had reported in many places that he had called upon the ſaid Sir James Wallace, to give him the ſaid Charles Bourne the ſatisfaction of a gentleman, which the ſaid Sir James Wallace had refuſed to do; upon which the ſaid Charles Bourne ſaid to this deponent, that he the ſaid Charles Bourne did not believe the ſaid Sir James Wallace to be a coward, but that the ſaid Sir James Wallace had behaved to the ſaid Charles Bourne like a ſcoundrel and a raſcal, and had refuſed to give him the ſatisfaction of a gentleman, and that he the ſaid Charles Bourne would cane the ſaid Sir James Wallace wherever he met him; upon which this deponent told the ſaid Charles Bourne that he had no cauſe or reaſon whatſoever for ſaying what he then did reſpecting the ſaid Sir James Wallace; that the letters which the ſaid Charles Bourne had ſent to the ſaid Sir James Wallace, and which this deponent told the ſaid Charles Bourne the ſaid Sir James Wallace had ſhewn to this deponent, did not import any demand of gentleman like ſatisfaction, or contain any thing but mere abuſe, and that this deponent could not conſider any of the meſſages which the ſaid Charles Bourne had ſent to the ſaid Sir James Wallace by the waiter of the inn in the light of a meſſage to be ſent from one gentleman to another upon ſuch buſineſs, but that, if the ſaid Charles Bourne had ſent any gentleman to the ſaid Sir James Wallace with a proper meſſage, this deponent believed that the ſaid Sir James Wallace would have anſwered the ſame, and met the ſaid Charles Bourne. And this deponent then alſo told the ſaid Charles Bourne, that the letters which had been ſent by him to the ſaid Sir James Wallace, appeared to this deponent to have been written with a view or intent to provoke the ſaid Sir James Wallace to ſend a challenge to the ſaid Charles Bourne; to which the ſaid Charles Bourne replied, Yes, that he wiſhed to have had it ſo, and that he had not ſent the ſaid Sir James Wallace any written challenge, for that he had rather that Sir James Wallace ſhould have challenged him the ſaid Charles Bourne, and that he the ſaid Charles Bourne knew the ſaid Sir James Wallace, and therefore ſhould be very careful how he acted with him the ſaid Sir James Wallace, or words to that effect: upon which this deponent aſked the ſaid Charles Bourne what then were his the ſaid Charles Bourne's intentions towards the ſaid Sir James Wallace, in caſe the ſaid Sir James Wallace had gone to him the ſaid Charles Bourne at the White-Hart inn, upon any of the ſaid meſſages which the ſaid Charles Bourne had ſent to the ſaid Sir James Wallace by the waiter of the ſaid inn; and the ſaid Charles Bourne told this deponent, that he the ſaid Charles Bourne did not then know what he ſhould have done to the ſaid Sir James Wallace, or how he ſhould have acted, but that, if the ſaid Sir James Wallace had then refuſed to give him the ſaid Charles Bourne ſatisfaction, he the ſaid Charles Bourne was determined to have beaten the ſaid Sir James Wallace: and the ſaid Charles Bourne then aſked this deponent, if he this deponent thought that the ſaid Sir James Wallace would ſtill meet him the ſaid Charles Bourne, in caſe the ſaid Charles Bourne ſhould ſend a gentleman to the ſaid Sir James Wallace with a proper meſſage, and this deponent told the ſaid Charles Bourne, that this deponent believed the ſaid Sir James Wallace certainly would do ſo; and the ſaid Charles Bourne then ſaid,

that

that he would go immediately to London, and get a gentleman there to wait upon the ſaid Sir James Wallace; and that, if the ſaid Sir James Wallace did not then give him the ſaid Charles Bourne ſatisfaction, he the ſaid Charles Bourne would immediately publiſh the letters which he the ſaid Charles Bourne had written and ſent to the ſaid Sir James Wallace.

PETER DUPUY ABBOTT.

Sworn at Weſtm^r Hall,
30th June, 1783.
F. BULLER.

WILLIAM DAVIES, of Priſton, in the county of Somerſet, Eſq. Agent Victualler of Gibraltar, maketh oath, and ſaith, That, on or about the 7th day of December laſt, according to the beſt of this deponent's recollection as to the time, as this deponent was coming out of a houſe at the north end of Milſom ſtreet, in Bath, Captain John Webber, of the Marines, was paſſing by, and ſaid to this deponent, that, if this deponent was going down the ſtreet, he would ſee Sir James Wallace get a thraſhing or a beating; to which this deponent replied, that, if he this deponent knew Sir James Wallace well, he would not ſuffer himſelf to be beaten by any man; but the ſaid Captain Webber ſaid, Well, you will ſee, and, taking hold of this deponent's arm, croſſed the ſtreet; and after they had walked a very little way down, this deponent ſaw Sir James Wallace coming up on the oppoſite ſide of the ſtreet, and ſaid to Captain Webber, There is Sir James Wallace, and Captain Webber ſaid, Yes, and there is the other, pointing to a gentleman who was then going up to the ſaid Sir James Wallace, and who the ſaid Captain Webber told this deponent was Mr Bourne, of the Marines, meaning the defendant in this cauſe, as this deponent believes. And this deponent ſaith, that when the ſaid Charles Bourne was within 3 or 4 paces of the ſaid Sir James Wallace, this deponent ſaw the ſaid Sir James Wallace take a ſmall piſtol out of his pocket, which he held in his hand, and the ſaid Charles Bourne had a ſtick in his hand, and that ſome words then paſſed between them, but this deponent was not near enough to hear the purport of their converſation. And this deponent ſaith, that the ſaid Charles Bourne never ſtruck, or attempted to ſtrike, the ſaid Sir James Wallace with his ſtick, nor did this deponent obſerve any blows, or threats of blows, from either of them to the other: and this deponent ſaith, that he never quitted ſight of them from the time this deponent firſt ſaw the ſaid Sir James Wallace, to the time of the ſaid Charles Bourne's meeting the ſaid Sir James Wallace and afterwards parting from him, when the ſaid Sir James Wallace walked up the ſtreet, and the ſaid Charles Bourne came acroſs the ſtreet to the ſaid Captain Webber and this deponent; and the ſaid Charles Bourne ſaid to the ſaid Captain Webber, Had I ſtruck him (meaning the ſaid Sir James Wallace), he would have ſhot me; he had a piſtol in his hand, and I ſhould have been imprudent if I had; but I will go home, and be prepared, and I will be with him again immediately, or words to that effect: and the ſaid Charles Bourne then left the ſaid Captain Webber and this deponent, and walked away.

WILL. DAVIES.

Sworn at Serjeants-Inn, the
20th day of June, 1783,
before me,
W. H. ASHHURST.

EDMUND, EARL OF CORK AND ORRERY, in the kingdom of Ireland, and Lord Boyle, Baron of Marſton, in the kingdom of Great Britain, maketh oath, and ſaith, That he knew, and had ſome acquaintance with, the ſaid Charles Bourne before he embarked in the year 1781 as an Officer of Marines on board his Majeſty's ſhip the Warrior; and that, ſome time in the beginning of December laſt, the ſaid Charles Bourne called upon this deponent, who was then in London, and repreſented to this deponent, that he the ſaid Charles Bourne had been very ill treated by Sir James Wallace during the time that he was under his command on board his Majeſty's ſaid ſhip the Warrior, and that he had repeatedly publicly inſulted him, and treated him with the moſt foul and abuſive language; and that he the ſaid Charles Bourne was then going to Bath to demand ſatisfaction of the ſaid Sir James Wallace for the ſame: and this deponent, then giving credit to what the ſaid Charles Bourne ſo related to this deponent, expreſſed much concern for his ſituation, and told him that this deponent wiſhed that it was then in

this deponent's power to go with him to Bath, as this deponent had reaſon to hope that he might be able to make up the difference between him and the ſaid Sir James Wallace, but that this deponent could not then poſſibly go with him, and that, if he could have gone, he did not mean to go as his ſecond, but as a mediator and friend to both; and this deponent particularly adviſed and recommended to the ſaid Charles Bourne to conduct himſelf with coolneſs and diſcretion, and get ſome friend that he could depend upon to go with him. And this deponent ſaith, that, upon the ſaid Charles Bourne's return from Bath to London, he again waited upon this deponent, and informed this deponent that he had ſent ſeveral meſſages to the ſaid Sir James Wallace by one of the waiters belonging to the White-Hart Inn, and had alſo written to him, but could not obtain an interview with him; and that he had met him in the ſtreet, and caned him, or ſtruck him with his cane, and was determined immediately to publiſh two letters which he told this deponent he had ſent to the ſaid Sir James Wallace at Bath, and then gave to this deponent to read; and this deponent then told the ſaid Charles Bourne, that this deponent could by no means approve of the ſaid Charles Bourne's conduct towards the ſaid Sir James Wallace at Bath, and adviſed him by no means to publiſh the ſaid letters, or put any thing in the newſpapers relating thereto. And this deponent ſaith, that he ſome time afterwards, on the ſame day, called upon Mr. Sleigh, a relation of the ſaid Sir James Wallace, and informed him of what the ſaid Charles Bourne had ſo told this deponent, and that the ſaid Charles Bourne had declared to this deponent, that he would publiſh the ſaid letters, and that this deponent had adviſed him by no means to do it; but this deponent ſaith, that he did not mean thereby to convey any meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, nor ever conſidered the ſaid Mr. Sleigh as a third perſon between this deponent and the ſaid Sir James Wallace. And this deponent ſaith, that the ſaid Mr. Sleigh then told this deponent, that he did not know that the ſaid Sir James Wallace was then returned from Bath, but was certain that he was not come to his houſe in London; that he might have ſtopped at his houſe at Hanworth, and that he the ſaid Mr. Sleigh would go to Hanworth that afternoon to ſee if he was come thither. And this deponent ſaith, that, about two days afterwards, he had a converſation with the ſaid Mr. Sleigh on the ſaid difference between the ſaid Charles Bourne and Sir James Wallace, when the ſaid Mr. Sleigh told this deponent, that he had ſeen the ſaid Sir James Wallace, who was then in town, and that the conduct and behaviour of the ſaid Charles Bourne towards the ſaid Sir James Wallace at Bath, was widely different from what the ſaid Charles Bourne had before related to this deponent, and that the ſaid Sir James Wallace intended to lay a ſtate of the ſaid Charles Bourne's proceedings before the Lords of the Admiralty: and this deponent then told the ſaid Mr. Sleigh, that, if any thing in this deponent's power could effect a reconciliation between the ſaid Charles Bourne and Sir James Wallace, it would give this deponent the greateſt happineſs; and this deponent afterwards expreſſed himſelf to the ſame effect to the ſaid Charles Bourne, and told him what the ſaid Mr. Sleigh had ſo ſaid to this deponent. And this deponent ſaith, that his only motive and inducement for interfering in the ſaid buſineſs was out of friendſhip to the ſaid Charles Bourne, and with a view of preventing him from doing any act that might tend to his diſadvantage; and that this deponent never took any other part in the ſaid buſineſs than that of a mediator and friend to both parties, in hopes of making up the difference between them in an amicable manner, and which this deponent conſtantly declared to very perſon with whom he about that time had any converſation about the ſame. And this deponent ſaith, that, whatever declarations the ſaid Charles Bourne may have made of this deponent's having undertaken any other or different part in the ſaid diſpute, he had no cauſe or authority for ſo doing, and never made any ſuch declaration in the preſence of this deponent; and that, if any concluſion hath ever been drawn from any converſation that this deponent ever had with the ſaid Charles Bourne in the preſence of any other perſon or perſons on the ſubject of the ſaid diſpute, that this deponent had undertaken to carry any meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, and to go out with him as his ſecond, ſuch concluſion could not be fairly drawn immediately from any thing that this deponent then ſaid, but

muſt have been derived from ſome antecedent miſrepreſentation of the matter by the ſaid Charles Bourne, at a time when this deponent was not preſent to hear and explain the ſame. And this deponent ſaith, that he was afterwards informed, that the ſaid Charles Bourne had publiſhed a letter in the Morning Herald of the 23d of December laſt, wherein he aſſerted that a nobleman did him the honour of calling on the ſaid Sir James Wallace, to inform him that he the ſaid Charles Bourne was in town, and to know his the ſaid Sir James Wallace's determination, but could not ſee him; and that the ſaid Charles Bourne had declared, and that it was publicly reported, that this deponent was the nobleman meant and alluded to by the ſaid letter, and that this deponent had waited upon the ſaid Sir James Wallace with a challenge from the ſaid Charles Bourne, and had offered to go out with the ſaid Charles Bourne as his ſecond. And this deponent ſaith, that he was at that time at his houſe at Marſton, in the county of Somerſet, from whence he returned to London about the 8th day of January laſt, and that a few days afterwards this deponent had an interview with the ſaid Charles Bourne, by this deponent's appointment, in the preſence of Captain Cruikſhanks, of the 36th regiment of foot, to receive an explanation from the ſaid Charles Bourne of the meaning of his ſaid letter and report, when the ſaid Charles Bourne acknowledged to this deponent, that this deponent was the nobleman meant and alluded to by him in the ſaid letter, and that he had reported that this deponent had waited upon the ſaid Sir James Wallace with a challenge from him, and had offered to go out with him as his ſecond; upon which this deponent aſked the ſaid Charles Bourne what he could mean thereby, as he the ſaid Charles Bourne well knew that this deponent had never waited or called upon the ſaid Sir James Wallace with any meſſage whatſoever from him the ſaid Charles Bourne? And this deponent ſaith, that the ſaid Charles Bourne thereupon made an apology to this deponent, for his having made ſuch uſe of this deponent's name. And this deponent further ſaith, that he this deponent never did undertake to wait or call upon the ſaid Sir James Wallace with any meſſage, or to carry any meſſage whatſoever to him, from the ſaid Charles Bourne; and that this deponent never did, directly or indirectly, wait or call upon the ſaid Sir James Wallace with any meſſage, or carry any meſſage to him, from the ſaid Charles Bourne, and that this deponent never had any thought or intention of ſo doing. And this deponent ſaith, that, whenever this deponent hath called upon the ſaid Sir James Wallace, or at his houſe, which this deponent hath done before and ſince the diſpute now ſubſiſting had ariſen between the ſaid Charles Bourne and the ſaid Sir James Wallace, this deponent always did the ſame as a viſit of friendſhip between one gentleman and another, and not with any reference whatſoever to any ſuch diſpute between the ſaid Charles Bourne and the ſaid Sir James Wallace.

CORK AND ORRERY.

Sworn in Lower Groſvenor-ſtreet, the 27th day of June, 1783, before
JNº. NEWLAND, by Commiſſion.

JAMES MADDEN, of Newport-ſtreet, in the pariſh of Saint Martin in the Fields, in the county of Middleſex, Eſq. Firſt Clerk in the Marine Department of the Admiralty, maketh oath, and ſaith, That he hath for ſome time known and been intimately acquainted with the defendant Charles Bourne, and that, in a converſation which the ſaid Charles Bourne had with this deponent, ſome time in the month of December laſt, relating to a difference between the ſaid Charles Bourne and Sir James Wallace, the ſaid Charles Bourne told this deponent, that he the ſaid Charles Bourne had been at Bath to demand ſatisfaction of the ſaid Sir James Wallace upon the ſubject of the ſaid difference, and that he had ſent ſeveral meſſages to him, but that the ſaid Sir James Wallace declined to meet him the ſaid Charles Bourne, and that he the ſaid Charles Bourne had afterwards met the ſaid Sir James Wallace in the ſtreet at Bath, and had ſtruck the ſaid Sir James Wallace with his the ſaid Charles Bourne's cane, and that, on the ſaid Charles Bourne's return to London, Lord Cork had waited upon Mr. Sleigh, (a relation of the ſaid Sir James Wallace,) with a meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, and that the ſaid Lord Cork was to have gone out with him the ſaid Charles Bourne as his ſecond, but that the ſaid Sir James Wallace would not meet the ſaid Charles Bourne. And this deponent ſaith, that the ſame

ſame being at that time matter of public converſation, and the ſaid Charles Bourne having, as this deponent believes, told the ſame to ſeveral other perſons as well as this deponent, he this deponent did not conſider ſuch declaration of the ſaid Charles Bourne to this deponent as a ſecret, and therefore reported the ſame again to ſeveral other perſons, as it had been ſo related by the ſaid Charles Bourne to this deponent. And this deponent ſaith, that, in conſequence of his having ſo reported the ſame, this deponent, on or about the 21ſt day of December laſt, according to the beſt of this deponent's recollection as to the time, was called upon, at his houſe in Newport-ſtreet, by Captain Ralph Dundas, of the navy, and the ſaid Mr. Sleigh, who deſired to know from this deponent what the ſaid Mr. Bourne had ſaid to this deponent relating to the ſaid buſineſs, when this deponent told them he would be very explicit with them, for that the defendant Charles Bourne had declared to this deponent what this deponent hath herein before mentioned, or words to that effect; upon which the ſaid Mr. Sleigh told this deponent that it was a moſt infamous falſehood, or words to that effect. And this deponent ſaith, that he was afterwards called upon at the Admiralty by the Right Hon the Earl of Cork and the ſaid Mr. Sleigh, in company with another gentleman, who appeared to this deponent to be an officer, when the ſaid Earl of Cork queſtioned this deponent touching the ſaid Charles Bourne's having declared to this deponent that he the ſaid Earl of Cork had waited upon the ſaid Mr. Sleigh, or the ſaid Sir James Wallace, with a meſſage from the ſaid Charles Bourne, and that the ſaid Earl of Cork was to have gone out with the ſaid Charles Bourne as his ſecond; and, upon this deponent's admitting that the ſaid Charles Bourne had made ſuch a declaration to this deponent, the ſaid Earl of Cork told this deponent that the ſame was not true, and that he the ſaid Earl of Cork had never, directly or indirectly, done any ſuch thing, which ſurprized this deponent very much. And this deponent ſaith, that he afterwards told the ſaid Charles Bourne that what he had ſo declared to this deponent had been contradicted both by the ſaid Earl of Cork and the ſaid Mr. Sleigh, and that it had been ſaid that the ſaid Charles Bourne had never ſtruck the ſaid Sir James Wallace at Bath, and that this deponent apprehended the ſame might be a very ſerious buſineſs to him the ſaid Charles Bourne; upon which the ſaid Charles Bourne told this deponent, that he the ſaid Charles Bourne did not know what was meant by his not having ſtruck the ſaid Sir James Wallace, for that he the ſaid Charles Bourne had ſhaken his cane over the ſaid Sir James Wallace, and ſtruck him on the hat.

J. MADDEN.

Sworn at my houſe in Lincoln's-Inn-Fields, the 21ſt June, 1783, before me,
F. BULLER.

RALPH DUNDAS, of Arundel-ſtreet, in the Strand, in the county of Middleſex, Eſq. a Captain in his Majeſty's Royal Navy, maketh oath, and ſaith, That, ſome time about the latter end of December laſt, this deponent having heard it reported in ſeveral places, and that it was become the ſubject of converſation in moſt of the coffee-houſes in London, that the Right Hon. the Earl of Cork had conveyed a challenge from the above-named defendant Charles Bourne to Sir James Wallace, and that the ſaid Earl of Cork was to have gone out with him the ſaid Charles Bourne as his ſecond, and that Sir James Wallace had declined meeting him; and this deponent ſaith, that, as he had very good reaſons to believe that the ſaid Earl of Cork had never waited upon the ſaid Sir James Wallace with any meſſage from the ſaid Charles Bourne, and well knew, that if he had ſo done, that the ſaid Sir James Wallace would not have declined meeting the ſaid Charles Bourne; this deponent thought it neceſſary that the ſaid Sir James Wallace ſhould be immediately informed of ſo falſe, ſcandalous, and injurious a report; and that, in the forenoon of the 20th day of December laſt, this deponent, in his way to the ſaid Sir James Wallace, to inform him of the ſaid report, met the ſaid Sir James Wallace in his carriage, in the Strand, going into the city, when this deponent ſtopped the carriage, and informed the ſaid Sir James Wallace of the above report, who thereupon deſired this deponent to get into his the ſaid Sir James Wallace's carriage, and accompany him to the ſaid Earl of Cork; and this deponent accordingly got into the ſaid carriage, which the ſaid Sir James Wallace ordered to drive immediately to his own houſe, in Pall-Mall, where they ſtopt, and the ſaid Sir James Wallace

Wallace then drove with this deponent immediately to Lord Cork's, in Lower Groſvenor-ſtreet; and this deponent ſaith, that, on their enquiring for the ſaid Earl of Cork, at his houſe in Lower Groſvenor-ſtreet, they were informed by the ſervant there, that his Lordſhip had that morning ſet out for his houſe at Marſton, in Somerſetſhire. And this deponent ſaith, that, upon his endeavouring to find out the author of the ſaid report, this deponent was informed that James Madden, Eſq. a Clerk in the Marine Department of the Admiralty, had declared the ſame, upon which this deponent, in company with Mr. William Sleigh, of Whitehall, went, on the 21ſt of December laſt, to the ſaid Mr. Madden's houſe, in Newport-ſtreet, to know from the ſaid Mr. Madden his authority for having propagated ſuch a report; when the ſaid Mr. Madden informed this deponent and the ſaid Mr. Sleigh, that he the ſaid Mr. Madden would be very candid and explicit with them, and ſaid that the defendant Charles Bourne himſelf had declared to him the ſaid James Madden, that he the ſaid Charles Bourne had challenged the ſaid Sir James Wallace at Bath, but that he would not meet him, and that he had afterwards met the ſaid Sir James Wallace in the ſtreet there, and ſtruck him on the hat with his cane, and that, on his the ſaid Charles Bourne's return to London, Lord Cork had waited upon the ſaid William Sleigh with a challenge or meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, and was to have gone out with the ſaid Charles Bourne as his ſecond, or words to that effect; which declaration of the ſaid Charles Bourne's the ſaid William Sleigh then told the ſaid James Madden was a moſt infamous falſehood, and that the ſaid Earl of Cork had never waited upon him the ſaid William Sleigh with any meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace. And this deponent ſaith, that he hath been informed, and believes, that the ſaid William Sleigh, by that night's poſt, by letter informed the ſaid Earl of Cork of the ſaid declaration and report, and that ſome letters paſſed between the ſaid Earl of Cork and the ſaid William Sleigh in relation thereto, and that the ſaid Earl of Cork, by his letters to the ſaid William Sleigh, diſavowed and denied the truth of the ſaid report, ſo far as the ſame related or alluded to him the ſaid Earl of Cork, and declared that he had never undertaken to carry any meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, either directly or indirectly; copies of which letters the ſaid Sir James Wallace afterwards delivered to this deponent. And this deponent ſaith, that, in the courſe of a converſation between the ſaid Charles Bourne and deponent, in the month of January laſt, upon the ſubject of the ſaid diſpute between the ſaid Sir James Wallace and the ſaid Charles Bourne, this deponent, at the requeſt of the ſaid Charles Bourne, gave the copies of the ſaid letters to him, who peruſed and afterwards returned the ſame to this deponent; and the ſaid Charles Bourne then told this deponent, that he knew the ſaid Sir James Wallace to be a man of courage and reſolution, for that he had ſeen him in two actions, and did not apprehend that the ſaid Sir James Wallace was afraid of him the ſaid Charles Bourne.

RALPH DUNDAS.

Sworn in Court,
28th June, 1783,
By the Court.

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